IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41499 of 2013

AND

Service Tax Appeal No. 41500 of 2013

(Arising out of Order-in-Appeal Nos. 114 & 115/2013 (M-ST) dated 20.02.2013 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Chennai – 600 034)

The Commissioner of Service Tax **: Appellant**
Service Tax Commissionerate,
Newry Towers, Plot No. 2054, I Block,
2nd Avenue, Anna Nagar,
Chennai – 600 040

VERSUS

M/s. Saipem India Projects Limited **: Respondent**
Yarlagadda Towers, No. 4, Fourth Lane,
Off. Nungambakkam Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Shri R. Rajaraman, Assistant Commissioner for the Appellant

Ms. Shrayashree T., Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40423-40424 / 2023

DATE OF HEARING: 01.05.2023

DATE OF DECISION: 12.06.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

The Commissioner of Service Tax, Newry Towers, Anna Nagar, Chennai, has filed these appeals against the Order-in-Appeal Nos. 114 & 115/2013 (M-ST) dated 20.02.2013 passed by the Commissioner of Central Excise (Appeals), Chennai, who allowed the two appeals filed by

M/s. Saipem India Projects Ltd. against the Orders-in-Original Nos. 121/2010 (R) and 125/2010 (R) both dated 21.10.2011 passed by the Deputy/Assistant Commissioner of Service Tax, Service Tax-II Division, Chennai disallowing a part of the refund applications filed in terms of Rule 5 of the CENVAT Credit Rules, 2004, as per the table given below: -

Sl. No.	CESTAT Appeal No.	Refund Applicant	OIA No. & Date	OIO No. & Date	Period	Amount (in Rs.)	
						Refund allowed	Refund disallowed
1.	ST/41499/2013	M/s. Saipem India Projects Ltd.	114 & 115/2013 (M-ST) dated 20.02.2013	121/2010 (R) dated 21.10.2011	Oct 2009 to Mar 2010	73,78,675/-	49,89,074/-
2.	ST/41500/2013			125/2010 (R) dated 21.10.2011	July 2009 to Sep 2009	17,15,556/-	49,38,320/-

2.1 Briefly stated the facts in these appeals are that M/s. Saipem India Projects Limited, Chennai, the respondent herein, are holders of Service Tax Registration under the category of Consulting Engineer Service, Commercial Training and Coaching, Business Support Service and Information Technology Software Service. The respondent is mainly engaged in providing engineering and allied services in relation to projects in oil and gas, petrochemicals and refineries, both domestic and international. It appears that their main service is Consulting Engineer relating to offshore or onshore allied services and most of the services provided are in the nature of export of service, though the unit is not a 100% Export Oriented Unit (EOU). It was also informed that they are not registered with the Software Technology Parks of India (STPI).

2.2 The respondents had filed three refund claims: Rs.66,57,953/- for the period from July 2009 to September 2009, Rs.85,27,600/- for the period from October 2009 to December 2009 and Rs.40,85,690/- for the period from

January 2010 to March 2010, relating to accumulated input credit under Rule 5 of the CENVAT Credit Rules, 2004 read with clause 2(b) of the appendix to Notification No. 05/2006-C.E.(N.T.) dated 14.03.2006.

2.3 The Department entertained the view that the respondent's claims were to be restricted due to the following reasons: -

(a) The refund was claimed on the invoices pertaining to the respondent's Cathedral Road branch which were issued prior to centralized registration;

(b) The refund is required to be sanctioned based on the formula given under the Notification No. 05/2006-C.E.(N.T.) dated 14.03.2006;

(c) The refund in respect of certain input services was not eligible since the said services were not eligible input services.

It appears that the respondent had requested to process their refund claims for the eligible amount waiving the Show Cause Notice.

3.1 After due process of law, the Deputy Commissioner of Service Tax, Service Tax-II Division, Chennai has disposed of the refund claims relating to the period from October 2009 to December 2009 and January 2010 to March 2010 vide Order-in-Original No. 121/2010 (R) dated 21.10.2011 wherein the CENVAT Credit of Rs.13,85,975/- for the period from October 2009 to December 2009 and Rs.4,41,830/- for the period from January 2010 to March 2010 was disallowed on account of the same being availed prior to centralized registration of their Cathedral Road branch and the CENVAT Credit availed by the respondent in respect of Authorized Service Station, Customs House Agent Service and Advertising Service to the tune of Rs.8,049/- was not considered in computation of the eligible input tax credit on the ground that the said services

were not eligible input services for providing the output service. Accordingly, the adjudicating authority has sanctioned a refund of Rs.73,78,675/- out of the total claim of Rs.1,26,13,290/- after applying the formula in terms of Notification No. 05/2006-C.E.(N.T.).

3.2 In respect of the other claim pertaining to the period from July 2009 to September 2009, the Assistant Commissioner of Service Tax, Service Tax-II Division, Chennai vide Order-in-Original No. 125/2010 (R) dated 21.10.2011 has disallowed CENVAT Credit availed by the respondent in respect of Advertising Service and Real Estate Agent Service to the tune of Rs.58,854/- on the ground that the same pertained to input services which were unrelated to the provision of their output service and accordingly, sanctioned a refund of Rs.17,15,556/- out of the total claim of Rs.66,57,953/- for the said period by applying the formula prescribed in the said Notification.

4. Being aggrieved, M/s. Saipem India Projects Ltd. filed appeals before the Commissioner of Central Excise (Appeals), Nungambakkam, Chennai, who allowed their appeals deciding the following issues: -

(a) The ineligibility of refund prior to registration

(b) Refund rejected in respect of certain services as the same are not eligible input services

(c) Proportionate credit was arrived by restricting the formula to the period after registration.

5.1 The lower appellate authority has placed reliance on the decision of the Hon'ble high Court of Karnataka in the case of *M/s. mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore [2012 (27) S.T.R. 134 (Kar.)]* wherein it was held that Service Tax Registration is not mandatory for refund of accumulated CENVAT Credit of Service Tax paid on input services used for export of services.

5.2 On the issue of eligibility of certain input services which are allegedly not related to output service, reliance has been placed by the lower appellate authority on the decision rendered by the Hon'ble High Court of Judicature at Bombay in the case of *Commissioner of Central Excise, Nagpur v. M/s. Ultratech Cement Ltd. [2010 (20) S.T.R. 577 (Bom.)]* wherein it was held that 'input service' covers not only services used directly or indirectly, in or in relation to the manufacture of final products, but also various services used in relation to the business of manufacture, whether prior to the manufacture or after the manufacture. The contention of the refund applicant that the services availed are utilized in the course of their business and hence eligible for refund, was accepted by the lower appellate authority.

5.3 Thus, the lower appellate authority has held that: -

- The appellant would be eligible for the refund claimed relating to the invoices issued prior to registration.

- The rejection of refund claim on account of eligibility of input service was set aside and the appellant would be eligible for refund relating to the disputed services.

- The refund has to be sanctioned based on the formula given under the Notification No. 05/2006-C.E.(N.T.) *ibid.*, subject to other provisions of law.

6. The Revenue has come in appeal before this forum mainly on the following grounds: -

(i) The issue involved in these cases pertains to the eligibility of CENVAT Credit prior to centralized registration of the Cathedral Road premises of the respondent and not eligibility to CENVAT Credit prior to registration. As such, the reliance placed by the lower appellate authority on the ratio of the decision

of the Hon'ble High Court of Karnataka in the case of *M/s. mPortal India Wireless Solutions P. Ltd. (supra)* and drawing a conclusion that CENVAT Credit prior to registration is eligible, is totally misplaced. It was put forth that the lower appellate authority has erred in giving a finding contrary to the facts of the case.

(ii) Regarding the reliance placed by the lower appellate authority on the ratio of the decision in the case of *M/s. Ultratech Cement Ltd. (supra),* it was argued that the said ratio is relevant only to a manufacturer and not a service provider. The definition of 'input service' as per Rule 2(l) of the CENVAT Credit Rules, 2004 would reveal that there are two parts to the definition i.e., a specific part and an inclusive part. As per the specific part, 'input service' means any service used by a provider of 'taxable service' for providing an 'output service'. So, the use of any taxable service must be directly connected with the provision of the output service and not indirectly. Thus, the proper test to decide as to whether a particular service can be treated as an 'input service' for a particular 'output service' is to see whether, but for the use of the said input service, the said output service could not practically be provided in the manner in which it is required to be provided. It is this nexus that has been emphasized by the CESTAT, South Zonal Bench, Bangalore in its Final Order Nos. 590 to 601/2010 dated 19.03.2010 holding that the input service should have direct nexus to the rendering of output service, following the judgement of the Hon'ble Supreme Court in the case of *M/s. Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III [2009 (240) E.L.T. 641 (S.C.)].* The lower appellate authority has thus erred in holding that all services used in relation to the

business activity of the assessee would be eligible input services for availment of CENVAT Credit.

7. During the hearing before the Tribunal, learned Authorized Representative Shri R. Rajaraman (Assistant Commissioner) representing the Revenue has reiterated the findings of the refund sanctioning authority and also the contentions raised in the grounds-of-appeal. He placed reliance on the decision rendered by the Hon'ble High Court of Judicature at Madras in the case of *Commissioner of Central Excise, Coimbatore v. M/s. Sutham Nylocots [2014 (306) E.L.T. 255 (Mad.)]* to the effect that the assessee was not registered with the Department and thus, the credit entitlement could accrue only subsequent to the date of registration.

8.1.1 Ms. Shrayashree T., learned Advocate representing the respondent, has submitted that the respondent shall be eligible for refund of CENVAT Credit pertaining to the period prior to registration of their premises in view of the following series of decisions of the Hon'ble Jurisdictional High Court of Madras: -

- *Commissioner of Service Tax-III v. CESTAT & M/s. Scionspire Consulting Services (India) Pvt. Ltd. [2017 (3) G.S.T.L. 45 (Mad.)]*
- *Commissioner of G.S.T. and Central Excise, Chennai v. BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. [2018 (6) TMI 676 – Madras High Court]*
- *Commissioner of G.S.T. and Central Excise, Chennai v. Pay Pal India Pvt. Ltd. [2020 (7) TMI 321 – Madras High Court]*

It is further submitted that the above view has been expressed by the Tribunal in the case of *M/s. Temenos India Pvt. Ltd. v. Commissioner of Service Tax, Chennai [2020 (2) TMI 354 – CESTAT, Chennai].*

8.1.2 It has been submitted by the learned Advocate that there is no mandate under Rule 5 of the CENVAT Credit Rules, 2004 to obtain centralized registration for being eligible to claim refund.

8.2 The learned Advocate has further submitted that admissibility of credit cannot be done while examining the refund claim under Rule 5 and the procedure prescribed under Rule 14 of the CENVAT Credit Rules for recovery of CENVAT Credit wrongly taken or erroneously refunded, ought to have been followed in order to see if the input services were eligible for credit. In support of her argument, she relied upon the following decisions: -

- *Infosys BPO Ltd. v. C.C.E. & S.T., Bangalore, Service Tax-I [2022 (4) TMI 306 – CESTAT, Bangalore]*
- *K Line Ship Management (India) Pvt. Ltd. v. Commissioner of Service Tax [2017 (7) TMI 412 – CESTAT, Mumbai]*
- *WNS Global Services Pvt. Ltd. v. Commissioner of C.G.S.T. [2023 (3) TMI 130 – CESTAT, Mumbai]*
- *Commissioner of Service Tax, Delhi v. Convergys India Pvt. Ltd. [2009 (16) S.T.R. 198 (Tri. – Del) affirmed in 2010 (20) S.T.R. 166 (P&H)]*

9. Heard both sides and perused the records as available in the appeals.

10.1 We find that the learned lower appellate authority has relied upon the decision in the case of *M/s. mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore [2012 (27) S.T.R. 134 (Kar.)]* on the issue of allowing accumulated CENVAT Credit for refund prior to registration. The relevant portion of the above decision is extracted below: -

> *"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."*

10.2 In these appeals, the issue is relating to refund of CENVAT Credit accumulated in respect of the respondent's Cathedral Road Branch premises prior to centralized registration. We hold that the above decision is equally applicable to the facts of this case. Whether it be registration or centralized registration, when there is no mandatory provision in the Rules regarding registration, the CENVAT Credit cannot be denied.

10.3 The case-law relied upon by the learned Authorized Representative for the Revenue in *Commissioner of Central Excise, Coimbatore v. M/s. Sutham Nylocots [2014 (306) E.L.T. 255 (Mad.)]* is distinguishable on facts as the decision was rendered prior to the coming into effect of the CENVAT Credit Rules, 2004 and our view is also supported by the decisions of the Hon'ble Madras High Court in the cases of *Commissioner of G.S.T. and Central Excise, Chennai v. BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. [2018 (6) TMI 676 – Madras High Court]* and *Commissioner of G.S.T. and Central Excise, Chennai v. Pay Pal India Pvt. Ltd. [2020 (7) TMI 321 – Madras High Court]* relied upon by the learned Advocate for the respondent, wherein it has been held that Rule 5 of the CENVAT Credit Rules, 2004 has not mandated registration as a condition for refund of accumulated credit.

11. Regarding the disallowance of credit on Authorized Service Station, CHA Service, Advertising Service and Real Estate Agent Service to the extent of Rs.8,049/- and Rs.58,854/- during the period under dispute, we find that disallowing the credit on the aforesaid services is not sustainable as the definition of 'input service' is inclusive and as long as it is used in or in relation to the business, the assessee is eligible for taking the credit. The Hon'ble Apex Court in the decision rendered in the case of *Commissioner of Central Excise, Nagpur v. M/s. Ultratech Cement Ltd. [2010 (20) S.T.R. 577 (Bom.)]* has held as under: -

> *"33. It is argued on behalf of the Revenue that not only the ratio but the decision of the Apex Court in the case of Maruti Suzuki Ltd. (supra) must be applied ipso facto to hold that the credit of service tax paid on outdoor catering services is allowable only if the said services are used in relation to the manufacture of final products. That argument cannot be accepted because unlike the definition of input, which is restricted to the inputs used directly or indirectly in or in relation to the manufacture of final products, the definition of "input service' not only means services used directly or indirectly in or in relation to manufacture of final products, but also includes services used in relation to the business of manufacturing the final products. Therefore, while interpreting the words used in the definition of 'input service', the ratio laid down by the Apex Court in the context of the definition of 'input' alone would apply and not the judgment in its entirety. In other words, by applying the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra), it cannot be said that the definition of 'input service' is restricted to the services used in relation to the manufacture of final products, because the definition of 'input service' is wider than the definition of 'input'.*
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> *34. Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.*

35. The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing..... etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal."

12. In the light of the above, we do not find any infirmity in the impugned Order-in-Appeal Nos. 114 & 115/2013 (M-ST) dated 20.02.2013. Accordingly, the appeals filed by the Revenue are rejected.

(Order pronounced in the open court on **12.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd