IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41895 of 2014

(Arising out of Order-in-Appeal No. 134/2014 (MST) dated 14.03.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

Commissioner of GST and Central Excise **...Appellant**
Chennai Outer Commissionerate,
Newry Towers, No. 2054, I Block,
12th Main Road, II Avenue,
Anna Nagar,
Chennai – 600 040.

Versus

M/s. Verizon Data Services India Pvt. Ltd. **...Respondent**
Plot No. 1, SIDCO Industrial Estate,
9th Floor, Altius Block,
Olympia Technology Park,
Guindy,
Chennai – 600 032.

And

Service Tax Appeal No. 40600 of 2016

(Arising out of Order-in-Appeal No. 51/2016 (STA-I) dated 08.01.2016 passed by Commissioner of Service Tax (Appeals-I), 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited **...Appellant**
No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy,
Chennai – 600 032.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054, I Block,
12th Main Road, II Avenue,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Assessee : Shri K. Sivarajan, Consultant

For the Respondent : Smt. Anandalakshmi Ganeshram, Superintendent / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 18.09.2023
DATE OF DECISION : 22.09.2023

FINAL ORDER Nos.40838-40839/ 2023

Order : Per Ms. SULEKHA BEEVI C.S.

The issue involved in both these appeals being connected, they were heard together and disposed of by this common order. The parties hereby are referred to as assessee and Department for the sake of convenience.

2. Brief facts are that the assessee is engaged in providing taxable services *viz.,* "Commercial training and coaching, Erection Commission and Installation, Maintenance or repair Services, Information Technology Service and Business auxiliary Services". They had filed refund claims for refund of input service tax credit for different periods under Rule 5 of the CENVAT Credit Rules, 2004, in regard to the export of their output service. After due process of law, the original authority sanctioned certain amount and rejected the refund in respect of certain services. Against this, the assessee filed an appeal before the Commissioner (Appeals) who sanctioned refund of Rs.56,24,820/-. The Department has filed the appeal against sanction of Rs.56,24,820/- and the assessee has filed appeal against the rejection of Rs.2,79,52,371/- by the Commissioner (Appeals).

3.1 The Ld. Consultant Shri K. Sivarajan appeared for the assessee. It is explained that the assessee is engaged in export of Information Technology Services and they had three units which have centralized registration at Chennai, Hyderabad and

Bangalore. Apart from export of services, the assessee was also providing output service of renting of immovable property service. This was the only domestic output service rendered by the assessee. The assessee had also been registered as recipient of services for the payment of Service Tax in the nature of Management and Business Consultant Services, Manpower Recruitment and Supply Agency Services under reverse charge mechanism. The only domestic turnover of the assessee is with regard to renting of immovable property.

3.2 The Commissioner (Appeals) has rejected the refund claim of Rs.1,23,87,964/- on the ground that the refund claim filed is beyond the time limit of one year as provided under Section 11B of Central Excise Act, 1944 read with Rule 5 of CENVAT Credit Rules, 2004. The authorities below have computed the period of one year from the date of export invoice which is erroneous. The relevant date for computation of period of one year is the date of realization of foreign exchange and if computed from such date all the refund claims are well within time. The Ld. Consultant submitted that the decision of the Larger Bench of the Tribunal in the case of *Commissioner of Customs, Excise and Service Tax, Bangalore Vs. M/s. Span Infotech India Pvt. Ltd.[2018-TIOL-516-CESTAT-Bangalore Service Tax]*, had considered the issue and held that the relevant date for computation of period of one year in case of Rule 5 of CCR is from the date of realization of the foreign exchange.

3.3 In regard to the second issue, the Commissioner (Appeals) has rejected refund of Rs.1,42,37,627/-. It is submitted by the Ld. Consultant that while applying the quantum of domestic turn over in the formula for total turnover, the authorities below have applied the total value of Service Tax paid on Manpower Recruitment and Supply Agency Services to the tune of Rs.11,30,20,401/- instead of applying the actual domestic turnover in regard to renting of immovable property which is Rs.39,85,984/-. It is submitted by the Ld. Consultant that the

assessee is providing output service of renting of immovable property which is the only domestic turnover. The Service Tax returns will clearly show that the turnover in regard to the Manpower Recruitment and Supply Agency Service is for payment of Service Tax under reverse charge mechanism as a recipient of service only. The authorities below while computing the eligible refund ought to have considered the value of output service in regard to renting of immovable property only and not manpower recruitment and supply agency services.

3.4 The third issue is the rejection of refund claim in respect of various services alleging that these services have no nexus with the output services provided by assessee. An amount of Rs.8,90,762/- has been rejected by the authorities below in regard to outdoor catering services, rent-a-cab services, event management services, travel agent services and supply of tangible goods services alleging that these services have no nexus with the output services provided by the assessee. The Ld. Consultant submitted that the period involved is prior to 01.04.2011 during which period, the definition of input services had a wide ambit as it included the words 'activities relating to business'. For the different period in the assessee's own cases, the Commissioner (Appeals) has allowed the refund in respect of the very same services. The authorities below have relied upon the decision in the case of *Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement Works [2010 (18) STR 275 (Tri. Mumbai)]* which in turn has relied upon the judgment of the Hon'ble Supreme Court in the case of *Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III [2009 (240) ELT 641 (SC)]*. It is explained by the Ld. Consultant that the decision in the case of Maruti Suzuki Ltd. *(supra)* was rendered in regard to inputs and not input services. The Larger Bench of the Tribunal in the case *M/s. Reliance Industries Ltd. vs. Commissioner of Central Excise and Service Tax (LTU), Mumbai [2022 (60) GSTL 442 (Tri.-LB)]* had considered the application of the decision in the case of *Maruti Suzuki Limited (supra)* and had made the clarification that the said decision relates only to inputs and not to input services.

3.5 The fourth issue is the wrong application of formula for calculating eligible refund. The Ld. Consultant submitted that an amount of Rs.5,07,018/- has been rejected (reduced) from the amount claimed for refund for the reason that the authorities below have wrongly applied the formula while computing the eligible refund. The Ld. Consultant adverted to the table given in the appeal book explaining the total CENVAT Credit availed by them for the period October 2009. Out of the 230 transactions, the total credit availed by them is Rs.5,82,75,522/-. During the said period, the assessee had reversed an amount of Rs.5,07,018/- (4,92,252+9845+4923) being the amount sanctioned to them for an earlier period of refund. While computing the eligible refund, the authorities below have deducted this amount of Rs.5,07,018/- from the total input credit taken by the assessee. Thus, the authorities below have wrongly applied the figure of total credit. In fact, the total credit taken by the assessee for calculating the eligible refund ought to be Rs.5,82,75,522/-. The Ld. Consultant prayed for a favorable order.

4.1 The Ld. Authorised Representative Smt. Anandalakshmi Ganeshram appeared and argued for the Department. In regard to the first point of rejection of refund claim on the ground that the refund is filed beyond the period of one year, the Ld. AR submitted that the authorities below have correctly computed the period from the date of invoice/date of export.

4.2 In regard to the amount of Rs.1,42,37,627/- which is appealed by the assessee on the ground that the amount of domestic turnover applied in the formula is erroneous, the Ld. AR submitted that the matter requires to be re-looked by the authorities below.

4.3 The Ld. AR argued that the credit availed in respect of outdoor catering services, custom house agency services,

insurance services, rent-a-cab services, travel agent services, supply of tangible goods services, management consultant services, business support services, management, maintenance and repair services availed by the assessee is ineligible. The Commissioner (Appeals) ought not to have allowed the credit in respect of these services as they have no nexus with the output services provided by the assessee.

4.4 The Commissioner (Appeals) has allowed an amount of Rs.7,19,638/-. The Ld. Consultant for the assessee has explained the contentions in regard to an amount of Rs.7,19,638/- which is discussed in paragraph 9(vii) of the order passed by the Commissioner (Appeals) *vide* Order-in-Appeal Nos. 132-134/2014 dated 14.03.2014. It is submitted by the Ld. Authorised Representative that the original authority had disallowed the refund of this amount whereas the Commissioner (Appeals) has allowed the same observing that the exports being continuously done, the claim cannot be rejected. The Ld. AR argued that the assessee is not eligible for refund of this amount. The Ld. Consultant on behalf of assessee countered this submission made by the Ld. AR adverting to the final order in the assessee's own case F.O.No. 40299-40309/2022 dated 24.08.2022 wherein in paragraph 8, the Tribunal had observed that it is not required to have one to one correlation with the exports and the input credit availed.

4.5 The Ld. AR prayed that the assessee appeal may be dismissed, the Department appeal may be allowed.

5. Heard both sides.

6.1 The Ld. Consultant appearing for the assessee has summarized the issues with regard to rejection of refund in a table form, which is as under:-

Particulars	July to Sep 2009	Oct to Dec 2009	Total
Appeal Filed By	**Revenue Appeal**	**Assesses' s Appeal**	
Refund filed beyond the time limit of 1 year (Exclusion of CENVAT Credit and exclusion of Turnover of INR 42,93,92,219)		1,23,87,964	**1,23,87,964**
Wrong Turnover (Manpower Service) considered for computation of eligible refund		1,42,37,627	**1,42,37,627**
Ineligible Credits			
Outdoor Catering	4,84,355	3,92,027	**8,76,382**
Customs House Agent	18,340	28,798	**47,138**
Insurance	47,36,843		**47,36,843**
Rent - A - Cab	1,55,855	3,27,044	**4,82,899**
Event Management		31,947	**31,947**
Travel Agent	63,855	36,856	**1,00,711**
Supply of Tangible goods	5,287	3,090	**8,377**
Management Consultant	1,00,524		**1,00,524**
Business Support Services	56,645		**56,645**
MMR - Others	3,116		**3,116**
Total	***56,24,820***	***8,19,762***	***64,44,582***
Ineligible Cenvat credit - Credit taken after the last date of export	7,19,638		**7,19,638**
Wrong formula considered for computation of eligible refund		5,07,018	**5,07,018**
Grand Total	**63,44,458**	**2,79,52,371**	

6.2 The first issue is with regard to rejection of refund alleging that the refund claim filed is beyond the period of one year. On perusal of the impugned order No. 130/2013 dated 26.11.2013, in paragraph 8, the original authority has discussed as under:-

> *"8. Before considering the eligibility of the appellant regarding their claim for refund, it has to be decided if the claim for refund has been filed in time as per the provisions of Sec.11B. The refund claim for the period October 2009 to December 2009 was filed in this office on 28.10.2010 and the dates of the export invoices are from 15th October 2009 to 29th December 2009. As the relevant date as per Sec.11B in respect of exports is the date of exports, I find that the claim is time barred in respect of invoices raised from 15.10.2009 to 28.10.2009, hence the Input Credit take, as per the details furnished by the Assessee and confirmed by the C.A. which amounts to Rs.1,23,87,964/-is rejected. For the Export of services pertaining to the following Export Invoices raised from 15.10.2009 to 28.10.2009 is also rejected which are times barred.*

Sl. No.	***Export Invoice No.***	***Date***	***Invoice Value in Rs.***
1	*CHIDI09010*	*15-Oct-09*	*2,76,70,063*
2	*CHIDI09011*	*28-Oct-09*	*23,36,48,917*
3	*HYIDI09010*	*15-Oct-09*	*1,08,76,250*
4	*HYIDI09011*	*28-Oct-09*	*14,28,39,673*
5	*CHHDI09007*	*15-Oct-09*	*1,26,76,964*
6	*CHSPI09004*	*28-Oct-09*	*6,49,512*
7	*CHDSI09012*	*28-Oct-09*	*3,51,994*
8	*HYDSI09008*	*28-Oct-09*	*6,78,846*
	Total		***42,93,92,219/-***

6.3 It can be seen from the above table that the authorities below have computed the period of one year form the date of invoice. The Larger Bench of the Tribunal in the case of *M/s. Span Infotech India Pvt. Ltd. (supra)* has held that in the case of refund in respect of services exported, the relevant date for computation of the period of one year is the date of realization of the foreign exchange and not the date of invoice. Following the said decision, we answer this issue in favor of the assessee and against the Department.

6.4 The second issue is with regard to error in computation of the total eligible credit. It is pointed out by the Ld. Consultant that while applying the quantum of domestic turnover in the formula for calculating the eligible credit, the authorities below have applied the figures in relation to Manpower Recruitment and Supply Agency Services. The ST-3 Returns filed by the assessee have been produced along with the appeal paper book. It is seen that the assessee is discharging Service Tax under Manpower Recruitment and Supply Agency Services as the recipient of service under reverse charge mechanism. This cannot be considered as the domestic turnover. While applying the formula, the output service provided by the assessee in the domestic area has to be considered. The quantum of domestic turnover in regard to renting of immovable property would be only Rs.39,85,984/-. On the basis of records, this issue is found to be in favor of the assessee and against the Department. However, the same requires to be remanded to the original authority for recalculation by applying the correct domestic turnover.

6.5 The third issue is the rejection of refund in respect of various services alleging that these services have no nexus with the output services provided by the assessee. The period involved is prior to 01.04.2011 when the definition of services included the phrase 'activities relating to business'. It is also pointed by the Ld. Consultant that in the assessees' own case for different period, the Commissioner (Appeals) has allowed refund in respect of very

same services. We also take note of the fact that the authorities below have relied upon the decision in the case of *Manikgarh Cement Works (supra)* which has in turn relied upon the decision of the Hon'ble Apex Court in the case of *Maruti Suzuki Ltd. (supra)*, the decision rendered by the Hon'ble Apex Court in the case of *Maruti Suzuki Ltd. (supra)* is with regard to inputs and not input services. The same is not applicable to the facts of the case. After considering the various services, we are of the view that the rejection of the refund claim alleging that these services have no nexus with the output service provided by the assessee is without legal or factual basis. The issue is held in favor of the assessee and against the Department.

6.6 The fourth issue is the wrong application of formula for calculating the eligible refund. It is pointed out by the Ld. Consultant that in the period of October 2009, the assessee had availed total credit of Rs.5,82,75,522/-. During the said period, they had debited an amount of Rs.5,07,018/- being the refund sanctioned for an earlier period. While calculating the refund, the authorities below have deducted this amount of Rs.5,07,018/- instead of applying the total input credit availed by the assessee. We find that the contention of the assessee is correct. The total input credit availed by the assessee which is Rs.5,82,75,522/- has to be taken for calculating the eligible refund. This issue is found in favor of the assessee and against the Department. However, the issue requires to be remanded to the adjudicating authority for calculating the correct eligible refund.

6.7 The Ld. AR has submitted that an amount of Rs.7,19,638/- has been allowed by the Commissioner (Appeals) and that assessee is not eligible for the same. The said amount was rejected by the original authority for the reason that the credit has been availed after the last date of export. The Commissioner (Appeals) allowed this amount. The Department has filed an appeal against this issue alleging that the credit availed after the last date of export is not eligible for refund. We

note that the export being a continuous process and when the refund claim is filed periodically for different quarters, there is no requirement of one to one co-relation. The credit availed for the exports have to be considered. We hold that the Commissioner (Appeals) has rightly granted refund in respect of Rs.7,19,638/-. This issue is found in favor of the assessee and against the Department.

7. From the discussions above, we are of the considered opinion that the matter requires to be remanded to the adjudicating authority to reconsider the issues with regard to calculation of eligible refund. The adjudicating authority shall reconsider these issues as per the observations made above. We do not find any merits in the appeal filed by the Department as discussed above.

8. In the result, the impugned order is modified as discussed above. The appeal filed by the assessee is partly allowed and partly remanded as indicated above. The appeal filed by the Department is dismissed.

(Order pronounced in open court on 22.09.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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