CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. of 86667 of 2018

(Arising out of Order-in-Appeal No. MMK/441-450/RGD APP/2017 dated 22.01.2018 passed by the Commissioner of Central Tax, Central Excise & Service Tax, (Appeals), Raigarh, Navi Mumbai.)

M/s. WNS Global Services Pvt. Ltd. .....Appellant
Plant No. 10, Gate No. 4,
Godrej & Boyce Complex,
Pirojshanagar, LBS Marg,
Vikroli (West), Mumbai – 400 079

VERSUS

Commissioner of CGST, Navi Mumbai .....Respondent
10th Floor, Satra Plaza, Palm Beach Road,
Sector 19D, Vashi, Navi Mumbai,
Maharashtra – 400 705

WITH

(ii) Service Tax Appeal No. 89426/2018 (M/s. WNS Global Services Pvt. Ltd.); (iii) Service Tax Appeal No. 89714/2018 (M/s. WNS Global Services Pvt. Ltd.); (iv) Service Tax Appeal No. 89715/2018 (M/s. WNS Global Services Pvt. Ltd.); (v) Service Tax Appeal No. 89716/2018 (M/s. WNS Global Services Pvt. Ltd.); (vi) Service Tax Appeal No. 89717/2018 (M/s. WNS Global Services Pvt. Ltd.); (vii) Service Tax Appeal No. 89718/2018 (M/s. WNS Global Services Pvt. Ltd.); (viii) Service Tax Appeal No. 89719/2018 (M/s. WNS Global Services Pvt. Ltd.); (ix) Service Tax Appeal No. 89723/2018 (M/s. WNS Global Services Pvt. Ltd.); (x) Service Tax Appeal No. 89724/2018 (M/s. WNS Global Services Pvt. Ltd.); (xi) Service Tax Appeal No. 86402/2019 (M/s. WNS Global Services Pvt. Ltd.); (xii) Service Tax Appeal No. 85508/2020 (M/s. WNS Global Services Pvt. Ltd.); (xiii) Service Tax Appeal No. 85937/2020 (M/s. WNS Global Services Pvt. Ltd.); (xiv) Service Tax Appeal No. 85973/2020 (M/s. WNS Global Services Pvt. Ltd.); (xv) Service Tax Appeal No. 85389/2021 (M/s. WNS Global Services Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. MKK/490/RGD APP/2018-19 dated 20.02.2019 AJV/35/RGD APP/2019-20 dated 13.01.2020, AJV/20/RGD APP/2020-21 dated 05.06.2020, AJV/59/RGD APP/2019-20 dated 29.01.2020 and AJV/145/RGD APP/2020-21 dated 12.10.2020 respectively from (xi) to (xv) passed by the Commissioner of Central Tax, Central Excise & Service Tax, (Appeals), Raigarh, Navi Mumbai.)

APPERANCE:

Shri Rajan Mishra, Advocate alongwith
Shri Suryakant Singh, Advocate for the Appellant

Shri Anand Kumar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85270-85284/2023

Date of Hearing: 16.02.2023
Date of Decision: 28.02.2023

PER: DR. SUVENDU KUMAR PATI

These 15 appeals of the present Appellant, which were heard on 16.02.2023, is taken up together for orders today.

2. Rejection of refund claim of accumulated CENVAT Credits for non-compliance of conditions enumerated in Notification No. 05/2006-CE(NT) dated 14.03.2006 and Notification No. 27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the CENVAT Credit Rules, 2004 by the refund sanctioning authorities that had been assailed before the Commissioner of Central Tax, Central Excise & Service Tax, (Appeals), Raigarh, Navi Mumbai and partially modified through one appellate order, disposing of 10 Orders-in-Original, is assailed before this Tribunal to the extent of denial of refund claimed for the period January, 2012 to March 2015. In first 10 appeals shown in the cause-title Appellant assailed the legality of the said Order-in-Appeal. In respect of appeal numbers shown in the cause-title in Sr. No. xi to xv, confirmation of rejection of refund claim by the Commissioner (Appeals) for the period from Janunary, 2016 for March, 2016 of an amount of Rs.2,64,18,796/- on the ground of non-

production of invoices and non-availability of Appellant's name in the invoices, for April, 2017 to June, 2017 for an amount of Rs.2,17,71,862/- on the ground of no nexus with the output service and invoice not raised in the Appellant address, from October, 2015 to December, 2015 for Rs.68,58,158/- as inadmissible credit including mismatch of FIRC number for Rs.3,22,02,524/-, from April, 2005 to July, 2007 for an amount of Rs.332,77,659/- for none submissions of original documents even at the stage of second round of litigation after being remanded by the Hon'ble Bombay High Court and from October, 2016 to December, 2016 for an amount of Rs.1,29,50,527/- paid under Reverse Charge Mechanism in January, 2017 post the end of quarter made on 20.02.2019, 13.01.2020, 05.06.2020, 29.01.2020 and 12.10.2020 respectively are assailed before this Forum by the Appellant.

3. Fact of the case is identical in respect of all these appeals Appellant WNS Global Services Pvt. Ltd. is a multinational engaged in the business of process outsourcing services for its customers in India and Abroad. It operates from SEZ/STPI registered units at various locations in India including Mumbai, Nasik, Pune etc. It had obtained service tax registration under the category of Business Auxiliary Service (BAS). As an export oriented unit, it could not utilised CENVAT Credit of Service Tax taken on input services used for export of BAS. It sought for refund for 10 different periods under Rule 5 of CENVAT Credit Rule read with Notification No. 27/2012-CE(NT) and submitted declarations duly certified by statutory Auditor

as was mandated by the notification issued by the Government of India to the field formations for simplifying the procedure of sanction of refund of unutilised CENVAT Credits. Parts of its refund claim were allowed rest parts were rejected in the Order-in-Original, the detail of which is tabled below:-

Sr. No.	Order-in-original No. and date	Period of refund claim	Amount claimed (in Rs.)	Amount rejected (in Rs.)
1.	AC/R-150/Div-V/MU/13-14 dated 10.10.2013	January 2012 to March 2012	5,45,87,439/-	10,92,350/-
2.	AC/R-318/Div-V/MU/13-14 dated 10.03.2014	October 2012 to December 2012	4,76,92,354/-	46,43,132/-
3.	AC/R-97/Div-V/MU/14-15 Dated 07.07.2014	January 2013 to March 2013	4,83,33,938/-	47,78,522/-
4.	194-R/GCJ/14-15 dated 23.03.2015	April 2013 to June 2013	5,14,46,719/-	29,90,574/-
5.	278-R/GCJ/14-15 dated 31.03.2015	July 2013 to September 2013	5,41,21,833/-	32,51,143/-
6.	128-R/GCJ/14-15 dated 31.06.2015	October 2013 to December 2013	5,91,93,936/-	77,74,916/-
7.	AC/R-17/HN/Div-IX/ST-VII/Mumbai/15-16 dated	January 2014 to March 2014	6,26,18,096/-	33,93,389/-
8.	29-R/AC/2016-17 dated 11.05.2016	April 2014 to June 2014	5,54,59,797/-	63,27,456/-
9.	30-R/AC/2016-17 dated 03.05.2016	July 2014 to September 2014	6,27,64,707/-	59,49,534/-
10.	383-R/SJ/1-176 dated 10.03.2017	January 2015 to March 2015	6,32,00,856/-	31,22,472/-
			Total	4,33,23,488/-

In the appeals filed before the Commissioner (Appeals) for the total amount or rejection of refund to the tune of Rs.4,33,23,488/- He had recorded his findings concerning admissibility and non-admissibility of item wise credits and directed re-quantification of sanctioned refund amount to be done by the adjudicating authority on the basis of his observation. In respect of the other 5 appeals separate orders of rejection were passed by the Commissioner (Appeals) on different date, as noted in the preceding paragraph no. 2.

4. During the course of hearing of the appeal leaned Counsels for the Appellant Mr. Shri Rajan Mishra alongwith Shri Suryakant Singh submitted that in respect of Appellant's own case admissibility of those disputed credits was decided in favour of Appellant entitling it to get refunds and the said order of the CESTAT, passed in Departmental appeal, is cited in STR with reference No. *2016 (44) STR 454 (Tri.-Mum.)* by them. Mr. Mishra further submitted that issue being identical Appellant is entitled to the refunds that has been rejected by the Commissioner (Appeals) in his order dated 22.01.2018. With reference to judgment of this Tribunal passed in the case of Microsoft Research Lab India Pvt. Ltd. by the Bangalore Bench in Service Tax Appeal Nos. 20265-20266 of 2021 and *K Line Ship Management India Pvt. Ltd.* reported in *2019-TIOL-100-CESTAT-MUM*. He further submitted that it is not the correct position of law to test the eligibility of input services used for providing output services while granting refund and the Department is not permitted

to look into the requirement of Rule 2(l) of CENVAT Credit Rules, 2004 at the time of sanction of refund. *Per contra* leaned Authorised Representative Mr. Anand Kumar tried to justify the legality of the order passed by the Commissioner (Appeals) dealing with each individual case of input services and sough for confirmation of the same.

5. In respect of those 10 appeals, we are of the considered view that eligibility of the disputed credits have already been settled in the favour of the Appellant in its own case reported in 2016 (44) STR 454 (Tri.-Mum.) and its para 8 contains the description of each category of credit availed by the Appellant. Order remaining unchallenged would operate as *res-judicata* besides the fact that it has attained finality and bind the subsequent decisions by becoming a precedent law. In our earlier orders on this issue, we both the Members have already taken a view, in conformity to the precedent set by this Tribunal in the light of *K Line Ship Management India Pvt. Ltd.* cited supra, Microsoft Research Lab cited supra, and many others similarly placed judgment that without issue of notice under Rule 14 of CENVAT Credit Rules, 2004 refund claim should never be denied under Rule 5 of the said Rule. We are, therefore, of the view that Appellant succeeds in his first 10 appeals filed against Order-in-Appeal dated 22.01.2018.

6. In respect of appeal No. ST/86402/2019 passed against Order-in-Appeal dated 20.02.2019, Appellant affirms that it has in its

position the relevant invoices and would be convincingly establish that the disputed invoices were raised to it and the same would also cover part of the rejection claim under challenge in Appeal No. ST/85508/2020. Parting with the rejection of its refund claim in these 5 appeals on the ground of inadmissible credits for want of nexus between the inputs and outputs, we would reiterate our stand that the same are admissible credits and refund should accordingly be sanctioned in favour of the Appellant as observed in the preceeding paragraphs in respect of those 10 appeals. However, concerning mismatch of FIRC number that resulted in denial of credit to the tune of Rs.3,22,02,524/- and in respect of claim of refund of Service Tax paid under Reverse Charge Mechanism post the period of service taken, Appellant submits that both the issues are now settled through various decisions of this Tribunal which were not considered by the Commissioner (Appeals). Needless to mention here that FIRC receipt date is held to be taken for the purpose of comparison and slight mismatch in numericals could be due to various factors including typographical error, in which case name of the party issuing and receiving the service, exact amount etc. can be accepted as relevant factors for consideration of refund. On Service Tax paid under Reverse Charge Mechanism on the very next month of the quarter in which service was taken, we find force in the submission of learned Counsel that the decision of Tribunal reported in *2016-TIOL-3217-CESTAT MUMBAI,* orders passed in the case of *Gujarat Pipavave Port Ltd.* in Appeal No. ST/135-136/2007 and *India Cement Ltd.* reported in *2018 (5) TMI 603* could have been taken

into consideration by the Commissioner (Appeals) in deciding the issue.

7. In respect of Appeal No. ST/85973/2020 the rejection of refund was solely on the ground that original documents were unavailable, which Appellant claims to have submitted before the Deputy Commissioner refund at Gurgaon and even had gone to extent of approaching Hon'ble Bombay High Court against rejection of their refund claim for want of original documents, which was allegedly misplaced at the Deputy Commissioner level at their Gurgaon office. As could noticed from the order of the Assistant Commissioner, Division-VI, CGST and CX, Navi Mumbai Commissionerate passed on 05.07.2018 rejecting 6 refund applications of Appellant filed way back in-between 2005-2007, on the request of the Manager of the Appellant Company request letter was sent to Gurgaon Service Tax Authorities by the Assistant Commissioner but no documents were received from them, for which in the absence of export invoices, despite availability of self-attested copies of input service invoices, he refused the credits in its entirety and Commissioner (Appeals) in his order noted at para 10.2 that only original documents are necessary for the purpose of examination of refund of CENVAT Credit and allowing such refund of credit on the basis of photocopies of invoices would facilitate taking of the credits for multiple times. We do not agree with his finding as the documents were held to be in the position of the Respondent-Department at its Gurgaon Office, concerning which acknowledgment copy was also produced by this

Appellant before the Hon'ble High Court. Therefore, the attested copies of the invoices could have been considered as proof of production of document evidencing payment of duty, against which creditor's claimed. It is worthwhile to reproduce relevant portion of Section 65 of the Indian Evidence Act, that would provide an answer to the issue.

> *"65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—*
> *(a) …*
> *(b) …*
> *(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time."*

7.1 In view of the above provision of law, we are of the considered view that relevant provision of Section 65 could have been invoked by the Commissioner (Appeals) in deciding the issue of refund and as a matter of caution, he could have taken an undertaking from the Appellant against any future claim on the same invoices, if found out subsequently. Hence the order.

THE ORDER

8. (a) Appeals at Sr. No. (i) to (x) of the cause-title are allowed and the Respondent-Department is directed to release the refunds within 3 months of this order, with interest, if any;

(b) Appeals at Sr. No. (xi) & (xii) of the cause-title are remanded back for verification of disputed invoices and production of missing invoices, so as to facilitate refund accordingly by the original Authority;

(c) Appeals at Sr. No. (xiii) & (xv) of the cause-title are remanded back to the original Authority for examination of admissibility of refund rejected due to mismatch of FIRC number and payment of Service Tax under Reverse Charge Mechanism post the end of quarter in which services was taken and;

(d) Appeal at Sr. No. (xiv) of the cause-title is remanded back to the original Authority for grant of refund on the basis of attested photocopies of the relevant invoices and documents accepting the same as secondary piece of evidence of payment of tax, against which credit is claimed.

(e) Orders be complied within 3 months of its receipt.

(Order pronounced in the open court on 28.02.2023)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad