

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 1451 Of 2011**

[Arising out of OIA No. 191/BK/GGN/2011 dated 26.05.2011 passed by the Commissioner (Appeals) of Central Excise, Gurgaon]

**M/s Bechtel India Private Limited** : **Appellant (s)**  
244-255, Udyog Vihar, Phase-IV, Gurgaon

Vs

**Commissioner of Service Tax, Delhi** : **Respondent (s)**  
IAEA, House, M.G.Road, IP Estate, New Delhi-110002

APPEARANCE:

Shri Shashank Shekhar, Advocate for the Appellant  
Shri Shivam Syal, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60377/2023**

Date of Hearing:11.07.2023

Date of Decision:13.09.2023

**Per : S. S. GARG**

The Appellant has filed the present appeal against Order-In-Appeal No. 191/BK/GGN/2011 dated 26.05.2011, whereby the Ld. Commissioner (Appeals) upheld the Refund Order dated 09.07.2010 passed by the Ld. Deputy Commissioner, Service Tax (Audit), thereby confirming the rejection of refund of INR 1,56,34,321/- to the Appellant for the period April 2008 to March 2009.

2. Brief facts of the case are that the appellant M/s Bechtel India Private Ltd is registered with Service Tax Division- III Gurgaon Vide Service Tax Registration No. CE-Consul Eng/ Delhi III/BIPL/14/98 dated 24.8.98 for providing services under the category of consulting Engineer's Service. The appellant filed 12 refund claims for unutilized

CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.5/2006-CE(NT) dated 14.3.2006. The adjudicating authority vide the impugned order sanctioned a refund amount of Rs. 4,73,75,153/- and rejected the amount of Rs. 1,56,34,321/-. Aggrieved by the order of the Deputy Commissioner, the appellant filed appeal before the Ld. Commissioner (Appeals) who vide impugned order has upheld the order of the Deputy Commissioner. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Ld. Counsel appearing on behalf of the appellant submitted that the impugned order rejecting the refund with regard to input services used for export of service is not sustainable in law as the same has been passed without properly appreciating the definition of 'Input Service' and export of service rules and without considering the precedent decisions on the same issue.

5. Ld. Counsel has given in tabular form the various grounds of rejection of the refund amount and the appellant's submissions against refund rejection, substantiated by case laws which are reproduced herein below:

| S. No. | Grounds for Rejection                                                       | Appellant's Submissions                                                                                                                                                                | Amount (INR)  | Relevant Case Laws                                                                                                                                                                      |
|--------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | Input invoices received at the premises not registered with the Service Tax | 1. During the relevant period, the Appellant was operating from the following offices:<br>a. 249A, Udyog Vihar, Gurgaon- Registered under the Service Tax;<br>b. 244-245, Udyog Vihar, | 1,38,62,014/- | <i>Registration is not a pre-condition for availment of credit or refund thereof</i><br><br>1. mPortal India Wireless Solutions Pvt. Ltd. Vs. CST, Bangalore; 2012 (27) STR 134 (Kar.)- |

| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Amount (INR) | Relevant Case Laws                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | Authorities           | <p>Gurgaon- Used for receiving and providing taxable services;</p> <p>c. Plot No. 31, Sector 18, Gurgaon- Used for receiving and providing taxable services, storing records, books of accounts and office related items, thus, used for receiving and providing taxable services; and</p> <p>d. 418, Naurang House, 21, KG Marg, Cannaught Place, New Delhi- Used for administration purposes.</p> <p>2. The Appellant's refund to the tune of INR 1,38,62,014/- was rejected on account of certain invoices being issued on Appellant's offices mentioned at 1(b), (c) and (d) above.</p> <p>3. The Appellant submits that under Section 68 and 69 of the Finance Act, the requirement for registration arises where a person is liable to pay service tax. However, during the relevant period of dispute, the entire turnover of the</p> |              | <p>2. Principal Commissioner of Central Tax, Bangalore East Vs. Huawei Technology India Pvt. Ltd.; 2022 (60) GSTL 24 (Kar.)-</p> <p>3. Commissioner of Service Tax, Chennai Vs. E-care India Pvt. Ltd.; 2017 (52) STR 246(Mad.)-</p> <p>4. Commissioner of Service Tax-III, Chennai Vs. CESTAT, Chennai; 2017 (3) GSTL 45 (Mad.)-</p> <p>5. Commissioner of Service Tax, Noida Vs. Atrenta India Pvt. Ltd; 2017 (48) STR 361 (All.)-</p> |

| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Amount (INR) | Relevant Case Laws                                                                                                                                                                                                                                                                                                                                             |
|--------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        |                       | <p>Appellant pertained to export of services on which the Appellant was not liable to pay tax. Thus, there was not requirement for obtaining registration on the part of the Appellant.</p> <p>4. Even otherwise, the Appellant submits that it has been settled in a catena of decisions that registration with the Service Tax Department is not the pre-requisite for claiming CENVAT Credit or refund thereof. There are no provisions under the Finance Act or the Credit Rules or any allied rules or notification issued thereunder which provides for such a restriction.</p> <p>5. Further, Rule 4A of the Service Tax Rules, 1994 does not require the registration details of the recipient to be mentioned on the invoice. Furthermore, in terms of proviso to Rule 9(2) of the Cenvat Credit Rules enables availment of credit even if the invoice does not contain certain details. Thus, issuance of invoice on an</p> |              | <p>6. Rajender Kumar and Associates Vs. Commissioner of Service Tax; 2021 (45) GSTL 184-</p> <p>7. Adbur Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi; 2017(5) GSTL 334-</p> <p><i>No requirement for registration where output is 100% export of services</i></p> <p>8. M/s Wipro BPOSolutions Ltd. Vs. Central Service Tax, Delhi; 2011 (10) TMI 26-</p> |

| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Amount (INR) | Relevant Case Laws |
|--------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------|
|        |                       | <p>office address which is not registered with the Service Tax Department is not such a fatal error so as to disentitle the Appellant from claiming credit, particularly when the receipt of input service or eligibility for availment of CENVAT Credit has not been disputed by the Department at any stage.</p> <p>6. Further, neither Rule 5 of the Cenvat Credit Rules nor Notification No. 5/2006 CE (NT) dated 14.03.2006 prescribes any condition for registration of premises before claiming of refund.</p> <p>7. Furthermore, the Department own circular, i.e., Circular No. 120/01/2010- ST dated 19.01.2010(<b>Page No. 232 to 235</b>), itself provides that in the case of refund under Rule 5, (i) so far as the nature of service which has been received by the exporter can be ascertained; (ii) tax paid therein is clearly mentioned; and (iii) other details as required under Rule 4(a) are mentioned, the refund should be allowed and that the Department should take</p> |              |                    |

| S. No.                                | Grounds for Rejection                                                                                                                                                                                                                                                                                                                              | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Amount (INR)  | Relevant Case Laws         |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                                       |                                                                                                                                                                                                                                                                                                                                                    | a liberal view in case of incomplete invoices. Such instructions also apply to the present issue.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |               |                            |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 2.                                    | Input services availed in the nature of entertainment services, helpdesk services, coffee vending machine, catering services, pandal and shamiana services, lawn services, hospitality services, accounting services in relation to filing of refund and appeals and insurance services relating to employee health scheme not being admissible as | <p>8. The Appellant submits that the CENVAT credit on the following input services has been denied:</p> <table border="1"> <thead> <tr> <th>Input Service</th> <th>CENVAT Credit Amount (INR)</th> <th>Reasons for eligibility</th> </tr> </thead> <tbody> <tr> <td>Entertainment Service</td> <td>4,441/-</td> <td>Essential for the well-being and rejuvenation of employees resulting in greater efficiency and productivity and thus, used by the Appellant for providing output services.</td> </tr> <tr> <td>Helpdesk Services</td> <td>1,112/-</td> <td>Essential for facilitating employees and resolving their routine issues, thereby, resulting in smoother operations and thus, being used by the Appellant for providing output services.</td> </tr> <tr> <td>Coffee Vending Machine and hospitalit</td> <td>59,907/-</td> <td>Essential for convenience and rejuvenation of employees resulting in</td> </tr> </tbody> </table> | Input Service | CENVAT Credit Amount (INR) | Reasons for eligibility | Entertainment Service | 4,441/- | Essential for the well-being and rejuvenation of employees resulting in greater efficiency and productivity and thus, used by the Appellant for providing output services. | Helpdesk Services | 1,112/- | Essential for facilitating employees and resolving their routine issues, thereby, resulting in smoother operations and thus, being used by the Appellant for providing output services. | Coffee Vending Machine and hospitalit | 59,907/- | Essential for convenience and rejuvenation of employees resulting in | 5,26,044/- | <p>9. RamalaSahkariChini Mills Ltd. Vs. Commissioner of Central Excise, Meerut-1; 2010 (260) ELT 321-</p> <p>10. Coca Cola India Pvt. Ltd. Vs. Commissioner of Central Excise; 2009 (242) ELT 168-</p> <p>11. Victor Gasket India Ltd. Vs. Commissioner of Central Excise, Pune-I, 2008 (10) STR 369-</p> <p><i>Event Management, Catering, Pandal and Shamiana Services, Lawn Services</i></p> <p>12. Omega Healthcare Management Services Pvt. Ltd. Vs. Commissioner of Central Tax, Bengaluru; 2022 (67) GSTL 588-</p> <p>13. Commissioner of Central Excise, Bangalore-II Vs. Millipore India Pvt. Ltd.; 2012 (26) STR 514-<br/><i>Insurance Services</i></p> <p>14. Milestone Preservatives Pvt. Ltd. Vs. Commissioner of Central Excise and</p> |
| Input Service                         | CENVAT Credit Amount (INR)                                                                                                                                                                                                                                                                                                                         | Reasons for eligibility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |               |                            |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Entertainment Service                 | 4,441/-                                                                                                                                                                                                                                                                                                                                            | Essential for the well-being and rejuvenation of employees resulting in greater efficiency and productivity and thus, used by the Appellant for providing output services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |               |                            |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Helpdesk Services                     | 1,112/-                                                                                                                                                                                                                                                                                                                                            | Essential for facilitating employees and resolving their routine issues, thereby, resulting in smoother operations and thus, being used by the Appellant for providing output services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |               |                            |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Coffee Vending Machine and hospitalit | 59,907/-                                                                                                                                                                                                                                                                                                                                           | Essential for convenience and rejuvenation of employees resulting in                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |               |                            |                         |                       |         |                                                                                                                                                                            |                   |         |                                                                                                                                                                                         |                                       |          |                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| S. No. | Grounds for Rejection                                           | Appellant's Submissions                                                 |            |                                                                                                                                                                                                                                                                                | Amount (INR) | Relevant Case Laws                                                                                                                          |
|--------|-----------------------------------------------------------------|-------------------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|        | these input services have no nexus with output services (table) | y services                                                              |            | greater efficiency and productivity and thus, used by the Appellant for providing output services.                                                                                                                                                                             |              | Service Tax, Vadodara; 2023 (71) GSTL 188                                                                                                   |
|        |                                                                 | Gold Resort Services                                                    | 1,261/-    | The expense pertains to subscription fee of the Gold Resort Services in India, which enabled the Appellant to receive business updates, thereby, helping in timely delivery of output services.                                                                                |              | 15. Microsoft Global Services Centre-I Pvt. Ltd. Vs Commissioner of Customs, Central Excise and Service Tax, Hyderabad; 2021 (44) GSTL 264- |
|        |                                                                 | Event Management, Catering, Pandal and Shamiana Services, Lawn Services | 2,12,813/- | These services were used for organising office events and for maintaining the cleanliness of office premises, garden area, etc. These services are essential for the Appellant to carry out its operations and therefore, used by the Appellant for providing output services. |              | 16. Commissioner of Central Excise, Bangalore-II Vs. Millipore India Pvt. Ltd.; 2012 (26) STR 514-<br><i>Accounting and Audit Services</i>  |
|        |                                                                 | Insurance Services                                                      | 30,328/-   | These services were procured by the Appellant for insuring the employees,                                                                                                                                                                                                      |              | 17. Machanda and Manchanda Vs. CCE; 2019 (21) GSTL 529-                                                                                     |
|        |                                                                 |                                                                         |            |                                                                                                                                                                                                                                                                                |              | 18. CCE Vs. Andhra Pradesh Paper Mills; 2010 (254) ELT 354-                                                                                 |

| S. No. | Grounds for Rejection | Appellant's Submissions       |            |                                                                                                                                                                                                                                                                                                                                                | Amount (INR) | Relevant Case Laws |
|--------|-----------------------|-------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------|
|        |                       |                               |            | <p>thereby resulting in greater sense of security and higher level of efficiency among the employees. Thus, these services were used by the Appellant for providing output services.</p>                                                                                                                                                       |              |                    |
|        |                       | Accounting and Audit Services | 2,16,182/- | <p>1. These services were received by the Appellant in relation to certification audit, compliances under various laws prevailing in India, accounting and audit. These services had a direct impact on the finances and stability of the Company and thus, were used for providing output services.</p> <p>2. 'Accounting' and 'auditing'</p> |              |                    |



| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                      | Amount (INR) | Relevant Case Laws |
|--------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------|--------------|--------------------|
|        |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | <p>services have specifically been mentioned by name and therefore, the Appellant is entitled to credit thereof.</p> |              |                    |
|        |                       | <p>9. The Appellant submits that 'input service' under Rule 2(l) of Credit Rules has been defined to mean any service used by a provider of taxable service for providing output service. The definition is very wide in its ambit for the following reasons:</p> <p>a. Usage of word 'any' implies that there is no restriction of any kind and credit of services of every nature can be availed;</p> <p>b. It is an inclusive definition and not an exhaustive one;</p> <p>c. Usage of word 'used' brings those services within the fold of 'input services' which facilitate the provider to render output services;</p> |  |                                                                                                                      |              |                    |

| S. No. | Grounds for Rejection                                                                                              | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Amount (INR) | Relevant Case Laws                                                                                                                                                                                                                                                                                                          |
|--------|--------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        |                                                                                                                    | <p>d. The term 'in relation to' is a very broad expression which presupposes another subject matter.</p> <p>e. The term 'such as' can only be construed as illustrative and not exhaustive.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                                             |
| 3.     | Input services availed on the basis of incomplete invoices which do not contain the name/ address of the Appellant | <p>10. The Appellant submits that out of the total amount of INR 5,41,352/- that has been rejected on account of missing details on invoices, INR 5,07,995/- pertain to invoices raised by M/s Orange Cabs Pvt. Ltd. (<b>M/s Orange Cabs'</b>)</p> <p>11. The Appellant submits that M/s Orange Cabs had inadvertently forgotten to mention the name and address of the Appellant on the invoices raised by it. To that effect, M/s Orange Cabs issued a certificate (<b>Page No. 239</b>) admitting to its mistake and certifying that the invoices amounting to INR 1,02,65,217/- (including service tax amount of INR 5,07,995/- were issued against provision of rent-a-cab service to the Appellant.</p> | 5,41,352/-   | <p>19. Commissioner of Central Excise, Ghaziabad Vs. Majestic Auto Ltd.; 2009 (16) STR 685-</p> <p>20. Rajasthan Diesel Sales and Service Vs. Commissioner of Central Excise, Jaipur-II; 2014 (36) STR 832-</p> <p>21. Novozymes South Asia Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore; 2015 (38) STR 204-</p> |

| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Amount (INR) | Relevant Case Laws |
|--------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------|
|        |                       | <p>Thus, refund on this account ought not to have been rejected.</p> <p>12. The Appellant submits that in case of invoices issued by other vendors, while Appellant's name had been mentioned, owing to inadvertent error on part of the vendors, the address had not been mentioned.</p> <p>13. However, since these services were received and accounted for by the Appellant and payments against the same were also made, CENVAT credit and consequent, refund thereof cannot be denied to the Appellant, particularly when the error was committed by the Appellant's vendors.</p> <p>14. Further, the proviso to Rule 9(2) of the Credit Rules allows for availment of credit even if the invoice does not contain all the particulars but contains details such as description of services, assessable value, and name and address of the service provider.</p> |              |                    |

| S. No. | Grounds for Rejection                                                                           | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Amount (INR) | Relevant Case Laws                                                                                                                                                                                                                                                                                                                         |
|--------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.     | Input services availed on the basis of photocopies of invoices (original invoices not provided) | <p>15. The Appellant submits that as long as the input services have been received and accounted for, and payments against the same have been made, the CENVAT Credit cannot be denied on the ground that original invoices were not filed or credit availed on the basis of photocopies.</p> <p>16. The Appellant submits that that there is no requirement for submission of original invoices for claiming the refund of CENVAT Credit as Condition 6of Appendix to the Notification 5/2006 simply requires the assessee to submit the refund application in Form A, in original, along with the prescribed enclosures and the relevant extracts of the records. Further, 'Enclosures' as defined in sub-Clause (ii) of Clause (D) of Annexure to the Notification 5/2006 prescribes "Copy of invoices" and does not specifically provide for the submission of original invoices.</p> | 3,20,553/-   | <p>22. Shivam Electrical Industries Vs UOI; 2018 (359) ELT 46 (J&amp;K)-</p> <p>23. Dhaulagiree Polyolefins Pvt. Ltd. Vs. CCE; 2002 (147) ELT 843-</p> <p>24. Pepsico Holding India Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-II; 2017(349) ELT 665-</p> <p>25. Vardhman Acrylics Ltd. Vs. CCE &amp;Cus.; 2006 (4) STR 489-</p> |
| 5.     | Input services which are                                                                        | 17. The Appellant submits that while it was providing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 3,84,358/-   | 26. Vodafone Essar Cellular Ltd. Vs. CCE, Pune; 2013                                                                                                                                                                                                                                                                                       |

| S. No. | Grounds for Rejection                                                                        | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Amount (INR) | Relevant Case Laws                                                                                                                                                                                                                                                                                                                                                                                 |
|--------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | utilised for providing output service to foreign affiliates in relation to projects in India | <p>consulting engineering services to its foreign affiliates, the refund amounting to INR 3,84,358/- was rejected on the ground that the project location was in India.</p> <p>18. The Appellant submits that it was providing consulting engineering services to its foreign affiliates. The said services were preparation of layouts, deigns, plans, drawing, etc. However, the services provided by the Appellant were used ultimately by the overseas affiliates only as any benefit arising out of the services provided by the Appellant accrued to the overseas affiliates only. Further, it was open for the service recipient located outside India to use or not to use the technical services provided by the Appellant.</p> <p>19. The Appellant submits that in the present case, the requirement of Rule 3(2) of the Export Rules stood satisfied as the services were provided by the Appellant from India and the recipient</p> |              | <p>(31) STR 738-</p> <p>27. Microsoft Corporation (I)(P) Ltd. Vs. Commissioner of ST; 2014(36) STR 766-</p> <p>28. Microsoft Corporation (India) Pvt. Ltd. Vs. Commissioner of C. Excise; 2018 (18) GSTL465-</p> <p>29. M/s Samsung India Electronics Pvt. Ltd. Vs. Commissioner of Central Excise; 2015 (1) TMI 1098-</p> <p>30. M/s Fanuc India Pvt. Ltd. Vs. CCE &amp; ST; 2020 (1) TMI 316</p> |

| S. No. | Grounds for Rejection | Appellant's Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Amount (INR) | Relevant Case Laws |
|--------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------|
|        |                       | <p>of the services were located outside India and were used by the foreign affiliates located outside India satisfying the condition of Rule 3(1)(iii) of the Export Rules.</p> <p>20. The Appellant submits that Circular No. 111/05/2009-ST dated 24.02.2009 (<b>Page No.236-238</b>) categorically provided that in case of services which generally include knowledge or technique based services, the relevant factor is the location of the receiver is relevant and not the place of performance. It has been clarified that the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, in such cases it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India.</p> <p>21. The Appellant humbly submits that its case is squarely covered by the</p> |              |                    |

| S. No.                                     | Grounds for Rejection                                                                                                                                                                             | Appellant's Submissions  | Amount (INR)         | Relevant Case Laws                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            |                                                                                                                                                                                                   | aforementioned Circular. |                      |                                                                                                                                                                                                                                                                                                                                                                                              |
|                                            | <b>Total</b>                                                                                                                                                                                      |                          | <b>1,56,34,321/-</b> |                                                                                                                                                                                                                                                                                                                                                                                              |
| Common grounds against rejection of refund |                                                                                                                                                                                                   |                          |                      |                                                                                                                                                                                                                                                                                                                                                                                              |
|                                            | 22. The appellant submit that it is trite law that substantive benefits cannot be denied on account of procedural lapses.<br>23. It is settled law that department is bound by its own circulars. |                          |                      | <i>Substantive benefits cannot be denied on account of procedural lapses</i><br>1. Formica India Division Vs. CCE; 1995 (77) ELT 511-<br>2. Cochin International Airport Ltd. Vs. CCT; 2021 (51) GSTL 322-<br>3. Uday Shankar Triyar Vs. Ram Kalewar Prasad; 2006 (1) SCC 75-<br><i>Circulars are binding upon the Department</i><br>4. UOI Vs. Arviva Industries Ltd.; 2007 (209) ELT 5 SC- |

6. On the other hand, the Ld. DR justified the impugned order and submitted that the refund has rightly been rejected in view of the Notification No. 5/2006-CE NT dated 14.03.2006. He also referred to the Circular No. 120/01/10 ST dated 19.01.2010 and Circular No. 111/05/2009-ST dated 24.02.2009. Ld. DR also relied upon the decision of the Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Coimbatore vs. Sutham Nylocots 2014 (306) ELT 255 (Mad.) and Hon'ble High Court of Gujrat in the case of Commissioner of Central Excise & Customs, Vadodara vs. Steelco Gujarat Ltd.

7. After considering the submissions of both the parties and perusal of material on record and the various decisions relied upon by

both the parties cited (supra), we find that the refund of the appellant has been rejected on the five grounds.

(i) Now, we will examine the each ground for which refund of cenvat credit has been rejected, the first ground on which the substantial amount of Rs. 1,38,62,014/- has been rejected is that input service invoices received at the premises not registered with the service tax authorities. In fact, the appellant has four operating offices and his registered address is as 249A, Udyog Vihar, Gurgaon which is registered under the service tax but certain invoices were issued at other offices as mentioned in 1 (b), (c) and (d) cited supra and the revenue has rejected the refund claim only on the ground that the registration is mandatory pre-condition of availment of credit or refund thereof.

This issue has been considered by various benches of the Tribunal and the High Courts and the appellant has mentioned some of these cases in his written submissions cited (supra).

In this regard, it is pertinent to refer to the judgement of Hon'ble Madras High Court in the case of Commissioner of Service Tax-III, Chennai vs. CESTAT, Chennai cited (supra) wherein the Hon'ble High Court after considering the various rules and the notification No. 5/2006-CE NT dated 14.03.2006 has come to the conclusion that registration of the premises is not a pre-condition for grant of refund. The relevant findings are contained in Para, 8.1 and 8.2 to 15 as under:-

**"8.1** For the sake of convenience, the necessary extracts of Rule 4 of the 1994 Rules, as also, the relevant parts of Rule 5 of 2004 Rules, are set forth below :

**"1994 Rules :**



**4. Registration** - (1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under Section 66B of the Finance Act, 1994 (32 of 1994) is levied :

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement :

Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of Section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998 :

Provided also that a person liable for paying the service tax in the case of taxable services referred to in sub-clause (zpz) of clause (105) of Section 65 of the Act may make an application for registration on or before the 31st day of March, 2005.

(1A) for the purposes of sub-rule (1), the Central Board of Excise and Customs may, by an order specify the documents which are to be submitted by the assessee along with the application within such period, as may be specified in the said order.

(2) Where a person, liable for paying service tax on taxable service, -

(i) provides such service from more than one premises or offices; or

(ii) receives such service in more than one premises or offices; or

(iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralized accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralized billing or centralized accounting systems are located.

(3) The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or centralised accounting is done, are located :

Provided that xxxxx

.....”

**2004 Rules :**

**5. Refund of Cenvat credit. -**

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the following formula

subject to procedure, safeguards, conditions and limitations, as may be specified by the board by notification in the Official Gazette :

$$\begin{array}{rcl} \text{Refund} & \text{(Export turnover of} & \\ \text{amount} & \text{goods + Export} & \\ = & \text{turnover of services} & \text{x Net} \\ & \text{Total turnover} & \text{Cenvat} \\ & & \text{credit} \end{array}$$

Where, -

- (A) "Refund amount" means xxxxx
- (B) "Net Cenvat credit" means xxxxx
- (C) "Export turnover of goods" means xxxxx
- (D) "Export turnover of services" means xxxxx

Export turnover of services = payments received during the relevant period for export services + export services whose provision....

- (E) "Total turnover" means xxxxx
- (a) xxxxx
- (b) xxxxx
- (c) xxxxx
- (2) xxxxx

Provided xxxxx

Provided further xxxxx

*Explanation 1* : xxxxx

- (1) "export service" means xxxxx
- (2) "relevant period" means xxxxx

*Explanation 2* : xxxxx

....."

**8.2** Mere perusal of Rule 5 of the 2004 Rules, would, *inter alia*, show that where a service provider, provides an output service, which is exported, without payment of

service tax, he would be entitled to refund of Cenvat credit, as determined by the formula provided in the Rule.

**8.3** The formula is not relevant for our purposes of adjudication of the issue raised in the instant appeal.

**8.4** What is relevant to note is that Rule 5 of the 2004 Rules does not stipulate registration of premises as a necessary prerequisite for claiming a refund.

**8.5** Insofar as the Assessee in this case, is concerned, it had obtained registration of its premises way back on 23-1-2009. The record shows that allegation of non-registration of premises relates to another building, which was taken on lease by the assessee and is located in Alwarpet, Chennai. Concededly, services were exported to a overseas Company, from this building which was not registered. Similarly, Rule 4 of the 1994 Rules, *inter alia*, provides that in case where a person is liable for paying service tax on a taxable services, who provides for such services from more than one premises, he may at his option register one or more premises or offices from where centralized billing or accounting is done. Once, the Assessee conveys his option to the concerned Authority, registration under Rule 4(2) of the 1994 Rules is granted by the Commissioner of Central Excise, within whose jurisdiction, such premises or offices are located.

**8.6** A perusal of the sub-rules (2) and (3) of Rule 4 of the 1994 Rules, on which, reliance is placed by the learned counsel for the Revenue, does not bring to fore any limitation, with regard to grant of refund, for unutilized Cenvat credit, *qua*, export services, merely on the ground that the premises are not registered.

**8.7** As a matter of fact, in this particular case, only the “additional building, which was taken on lease and was located at Alwarpet, Chennai”, was not registered.

**9.** The view that has been articulated above, is also taken by the Karnataka High Court in *mPortal India Wireless Solutions (P) Ltd. v. Commissioner of Service Tax, Bangalore*, [2012 \(27\) S.T.R. 134](#) (Kar.) and in *Commissioner of Service Tax v. Tavant Technologies India Pvt. Ltd.*, 2016 (3) TMI 353 = [2016 \(43\) S.T.R. 57](#) (Kar.).

**10.** Furthermore, the Allahabad High Court, vide its judgment in the case of : *Commissioner, Service Tax Commissionerate v. Atrenta India Pvt. Ltd.*, 2017 (2) ADJ 590 = [2017 \(48\) S.T.R. 361](#) (All.), has taken the same view.

**11.** For the sake of convenience, the relevant observations made in *mPortal India Wireless Solutions (P) Ltd. v. Commissioner of Service Tax, Bangalore*, are extracted hereafter :

“6. The assessee is a 100 per cent export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various service. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of the Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does

not apply for refund of accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.

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 prescribed 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.”

**12.** Since, this view, as indicated above, has been reiterated by the Karnataka High Court in the judgment rendered in the case of *Commissioner of Service Tax v. Tavant Technologies India Pvt. Ltd.*, to avoid prolixity, the observation made in the said case are not extracted.

**13.** However, the same view has been taken by the Allahabad High Court in its judgment in the case of : *Commissioner, Service Tax Commissionerate v. Atrenta India Pvt. Ltd.*, 2017 (2) ADJ 590, passed in Central Excise Appeal No. 214 of 2016. The relevant portions of which, for the sake of convenience, are extracted hereafter :

“12. Learned counsel for appellant has placed before us the rules made for refund of Cenvat credit vide Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006. The aforesaid rules have been framed in exercise of powers conferred by Rule 5 of Cenvat Credit Rules, 2004 and in supercession of earlier Notification. It provides that refund of Cenvat credit shall be allowed in respect of :

.....

13. Rule 2 & 3 state that claim for refund would be submitted not once for any quarter in a calendar year and by manufacturer or provider of out put service by submitting an application in Form-A. The said rules are quoted as under :

“(2) The claims for such refund are submitted not more than once for any quarter that where, -

(a) The average export clearances of final products or the output services in value terms is fifty percent or more of the total clearances of final products or output services, as the case may be, in the preceding quarter; or

(b) The claim is filed by Export Oriented Unit, the claim for such refund may be submitted for each calendar month.

(3) .....

14. Rule 4 provides that refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit allowed under Rule 3 of said rules against goods exported during the quarter or month to which the claim relates.

15. We do not find anything in the aforesaid rules which require registration as a condition or eligibility to claim refund. Even Form-A no where suggests that any such condition must be observed.

20. The judgment of Madras High Court therefore, was clearly rendered in the facts of that case. Be that as it may, we are inclined to accept the view taken by Karnataka High Court considering the fact that in the rules of refund of Cenvat credit, we do not find any such requirement of registration as a condition precedent or eligibility condition for claiming refund.”

**14.** We may, only indicate that the learned counsel for the Revenue has relied upon the judgment of a Division Bench of this Court, in the matter of *Commissioner of Central Excise, Coimbatore v. Sutham Nylocots*, [2014 \(306\) E.L.T. 255](#) (Mad.); the relevant portion of which, for the sake of convenience, is extracted hereafter :

“17. Learned counsel for the assessee placed reliance on the decision of *Formica India Division* (cited supra). The said decision was also pressed into service before the First Appellate Authority and the First Appellate Authority *while considering the aspect went into the factual issue and pointed out that the assessee had not obtained Central Excise Registration Certificate while manufacturing industrial fabrics and had not followed any Central Excise procedural formalities while clearing such industrial fabrics and this aspect was not disputed by the assessee.* Therefore the First Appellate Authority held that the *assessee had not fulfilled the several conditions stipulated statutorily such as duty paid nature of the inputs, use of the duty paid inputs in the manufacture of dutiable finished goods to substantiate their claim for Cenvat credit.* After taking note of the decision in the case of *Formica India Division* (cited supra), the First Appellate Authority pointed out that the assessee had not satisfactorily explained before the original authority or substantiated before the First Appellate Authority that they are entitled to the claim for Cenvat credit. This finding of the fact recorded by the First Appellate Authority has not been set at naught by the Tribunal rather no reasons have been given by the Tribunal for permitting the credit to be availed by the assessee.”

(emphasis is ours)

**14.1** According to us, the said judgment is distinguishable on facts.

**14.2** The Court, in the said case, was dealing with the provisions of Section 11AB of the Central Excise Act, 1944.

**14.3** Furthermore, as is clearly evident from the observations made in paragraph 17, refund was denied, as findings of fact had been returned against the assessee by the First Appellate Authority, to the effect, that proof of fulfillment of conditions statutorily stipulated for claiming refund, such as, duty paid, nature of inputs, use of duty paid inputs, in the manufacture of dutiable finished goods, was not provided, in order to substantiate the claim for Cenvat credit.

**14.4** In the present case, there is no dispute that the assessee, has to its credit unutilized Cenvat credit. Therefore, unlike, the facts obtaining in *Sutham Nylocots*, there is no dispute *inter se* parties with regard to the details required to process the Assessee’s claim for grant of refund.

**14.5** The only ground, on which, refund claim made by the Assessee, was rejected, was that, the additional building taken on lease was not registered with the concerned Authority.

**14.6** Therefore, according to us, no error can be found, in the approach adopted by the Tribunal.

**15.** In our view, Questions No. 2 and 3 seeks to raise an issue of law, which, already stands covered against the Revenue. We are, in respectful agreement, with the views taken by the Karnataka and Allahabad High Courts, as articulated in their respective judgments to which reference is made hereinabove.”

Further, we find that the decision relied upon by the Revenue in the case of Commissioner of Central Excise, Coimbatore vs. Sutham Nylocots cited (supra) has been distinguished by the Hon'ble Madras High Court itself in the case of Commissioner of Service Tax, Noida vs. Atrenta India Pvt. Ltd. Cited (supra) and further the Hon'ble Karnataka High court in the case of mPotal India Wireless Solutions Pvt. Ltd. Vs. CST, Bangalore, cited (supra) has consistently held that the registration of the premises is not a pre-condition for availment of cenvat credit and consequently the refund.

By following the ratio of the various decisions relied upon by the appellant, we hold that the denial of refund on this ground is not justified.

(ii) Now, coming to the second ground that input services availed in the nature of Entertainment Service, Helpdesk Services, Coffee Vending Machine and hospitality services, Gold Resort Services, Event Management, Catering, Pandal and Shamiana Services, Lawn Services, Insurance Services and Accounting and Audit Services in relation to filing of refund and insurance services relating to employee health scheme are not being admissible as these input services have no nexus with output services.

In this regard, we find that the appellant has relied upon by the various decisions and by going through these decisions, we find that each of the impugned services has been held to be input service as the same is availed in connection with the business and rendering of output service.

Further, we find that the definition of input service as provided under Rule 2(I) of CCR, 2004 mean any service used by a provider of taxable service for providing output service. The definition is very wide in its ambit for the following reasons that 'any' implies there is no restriction of any kind and consequently it is inclusive definition and not an exhaustive one. Thirdly the usage of word 'used' brings those services within the fold of 'input services' which facilitate the provider to render output services and the term 'in relation to' is a very broad expression.

Further, we find that the cenvat credit on input services are in fact relating the business activity of the appellant and are covered by the definition of input service under Rule 2(I) of CCR, 2004 and the appellant has rightly claimed the cenvat credit.

(iii) The third ground on which the refund has been rejected is that the Input services availed on the basis of incomplete invoices which do not contain the name/ address of the Appellant.

We find that out of the total amount of INR 5,41,352/- that has been rejected on account of missing details on the invoices mainly relates to invoices raised by M/s Orange Cabs Pvt. Ltd to the extent of Rs. 5,07,995/-. To this effect, the Ld. Counsel submits that M/s Orange Cabs issued a certificate admitting its mistake and certifying that the invoices amounting to INR 1,02,65,217/- (including

service tax amount of INR 5,07,995/- were issued against provision of rent-a-cab service to the Appellant.

Further, we find that with regard to other invoices issued by other vendors, the appellant's name has been mentioned, and only address is not mentioned.

In this regard, we refer to the decision of Novozymes South Asia Pvt. Ltd. Cited (supra) wherein the Tribunal has observed in Para 5 and 6 as under:-

“5. Coming to the deficiency in the documents, I observe that while applying the provisions of the Statute, officers seem to ignore important aspects. In para 15 of the Order-in-Original, the original authority observed “sub-rule (2) of Rule 9 of Cenvat Credit Rules, 2004, the bill/invoices shall contain the Registration No. of the person issuing, name and address of the person receiving taxable service, description and classification of the taxable service. As these details are not shown in the bill/invoice, hence Cenvat credit is liable to be disallowed. In the show cause notice issued, I find that same are not forthcoming on the invoice on which the credit was availed by the assessee. I have also verified a copy of the above said invoice and found that the above mentioned particulars are not forthcoming on the same”.

6. According to Rule 9(2) of Cenvat Credit Rules, the requirement of name and address of the person receiving taxable service is not a mandatory requirement. I reproduce the relevant portion of the Rule 9(2) to make this clear.

“Provided that the said document does not contain all the particulars but contains details of duty or Service Tax payable, description of the goods or taxable service, assessable value, central excise or Service Tax Registration No. of the person issuing the invoices as the case may be, the name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service.....”

From the above, it becomes clear that the name and address of the person receiving the taxable service is not a mandatory requirement. Secondly I also find that even verification of documents has not been done by the original authority properly and on going through the invoice produced by the appellants before me, I find that full name and address of the service receiver, the nature of service provided, Registration No. of the service provider, amount of Service Tax paid for the service rendered and address



of the issuer are available in the invoice. At least I could not make out any deficiency in the invoice. The Assistant Commissioner made a categorical observation that above mentioned particulars, meaning thereby, name and address of the person receiving taxable service, description and classification of taxable service are not forthcoming on the invoice. The only basis this objection can be upheld is that photocopy submitted by the appellant cannot be relied upon. Unfortunately, the Assistant Commissioner does not even say that he has verified the original or photocopy. The Commissioners (Appeals) observes :

“I find that adjudicating authority has convincingly established vide para 15 of the impugned order that the appellants have taken the credit of Service Tax on the basis bill which is not a prescribed document and does not contain details as required under sub-rule (2) of Rule 9 of Cenvat Credit Rules, 2004...”.

Apparently the Commissioner (Appeals) is too busy to verify the invoice in to deal with limitation also. It is strange that the original authority in para 16 of his order observes :

“It is also noticed that the assessee have not indicated or produced any specific documents or records before me during the adjudication proceedings as evidence that the documents on which the issue in question was brought to the knowledge of department earlier. The assessee has therefore suppressed the fact of availing and utilizing credit on Service Tax paid on services from the knowledge of the department. But for observation of the department audit team, the fact of irregular availment of Cenvat credit would have gone unnoticed and resulted in revenue loss to the exchequer...”

I am not able to understand what exactly was suppressed by the assessee in this case. The requirement of submission of the documents on the basis of which credit has been taken is no longer in the Statute book. Therefore, the appellant was not required to produce the documents on the basis of which credit has been taken. Hon'ble Supreme Court has already taken a view to the effect that to invoke suppression facts, suppression of facts should be such that they should be ones which are required to be declared in accordance with Statute before the Statutory Authorities. When a document on the basis of which credit was taken is not required to be produced, how suppression of facts can be invoked and on what basis defies imagination. In any case, I find considerable force in the arguments advanced by the learned counsel that before a decision in the case of *Cadila Healthcare* (supra) by Hon'ble Gujarat High Court was rendered, there was a view prevailing that credit is admissible in respect of service rendered by commission agent. In fact, there is a Circular issued by the Board

where such a view has been taken. Under these circumstances, extended period could not have been invoked in this case. The discussion above would show that on merits as well as on limitation, the impugned order cannot be sustained. Accordingly, the impugned order is set aside and appeal allowed with consequential relief if any to the appellants question and is in dispute before him. Otherwise there is no indication forthcoming as to whether the Commissioner (Appeals) had a look at the invoice or not. This is the sole ground on the basis of which he has disallowed the Cenvat credit. After considering the invoice, I am not able to find any deficiency in the bill/invoice, I have to take a view that Cenvat credit has been taken correctly.”

Therefore, we hold that the rejection of refund on this ground is also not valid in law.

(iv) Coming to the fourth ground of rejection, that input services availed on the basis of photocopies of invoices and original invoices not provided.

This issue has been considered by various benches of the Tribunal and it has been held that the refund of cenvat credit cannot be denied on the ground that the original invoices were not filed or credit availed on the basis of photocopies.

In this regard, we may refer to the decision of Shivam Electrical Industries cited (supra) wherein the Hon’ble High Court of Jammu and Kashmir in Para 6 and 7 has held as under:-

“6. We have considered the submissions made by learned counsel for the parties and have perused the record. The relevant extract of Rule 9 of the Cenvat Credit Rules, 2004 reads as under :

The Cenvat credit shall be taken by the manufacturer or the “(1) provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely.-

An invoice issued by : (a)

----- (i)

-----

*Explanation.* - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under Section 3 of the Customs Tariff Act;”

From perusal of the explanation, it is evident that the expression supplementary invoice used in the rules shall also include challan or any other document evidencing payment of additional amount of additional duty leviable under Section 3 of the Customs Tariff Act.

7.The aforesaid rule in our considered opinion nowhere provides that Cenvat credit cannot be availed on the basis of photocopy of the documents especially when the respondents have not disputed the correctness of the contents of the photocopies of the invoices produced by the petitioner. From the perusal of the certificate issued by the Superintendent, Customs and Central Excise, Range-III, Division-I, Ghaziabad, it is evident that the excise duty has been duly paid by the petitioner.”

Therefore, by following the ratio of the decision of the Hon’ble High Court, we hold that the rejection of refund on the ground of not filing the original invoices is not justified.

(v) Coming to the last ground on which the rejection of refund of Rs. 3,84,358/- is made with regard to input services which are utilised for providing output service to foreign affiliates in relation to projects in India. We note that the said services are in the nature of preparation of layouts, designs, plans, drawing etc. Thus, the services provided by the appellant were used ultimately by the overseas affiliates only as benefit arising out of the services provided by the appellant accrued to the overseas affiliates only and hence, the requirement of Rule 3(2) of the export of the services stood satisfied as the services were provided by the appellant from India and the recipient of the services are located outside India and were used by the foreign affiliates located outside India satisfying the condition of Rule 3(1)(iii) of export rules. Moreover, the Circular No. 111/05/2009-ST dated 24.02.2009 has clarified that the phrase ‘used outside India’ is to be interpreted to mean that the benefit of the service should accrue outside India. Moreover, the decision of the Tribunal in the

case of M/s Fanuc India Pvt. Ltd. cited (supra) wherein the Tribunal after considering the export of service rules and the Circular No. 111/05/2009-ST dated 24.02.2009 has held that where the benefit of the services accrued outside India it will be termed as export of services. Therefore, the denial of refund on this ground is also bad in law.

8. In view of our findings as discussed above, we set-aside the impugned order by allowing the appeal of the appellant with consequential relief, if any, as per law.

*(Pronounced on 13.09.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.