CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.

Service Tax Appeal No. 89251 of 2018

(Arising out of Order-in-Appeal No. PK/572/ME/2018 dated 27.06.2018 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai-II)

M/s. I Gate Global Solutions Ltd. **Appellant**
1,4,5,6&7 Floors & Basement,
Akruti Softech Park, MIDC, Cross Road No.21,
Andheri (E), Mumbai 400 093.

Vs.

Commissioner of CGST, Mumbai East **Respondent**
9th Floor, Lotus Infocentre,
Parel (E), Mumbai 400 012.

Appearance:

Shri Sanjeev Nair, Advocate for the Appellant
Shri Deepak Sharma, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 10.08.2023
Date of Decision: 12.09.2023

FINAL ORDER NO. 86355/2023

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is exporter of information technology software and they are registered with Service Tax. Appellant filed a claim for rebate of Rs.5,44,51,121/- under the provisions of Notification No. 11/2005 dated 19.04.2005 in respect of services exported by them for the period from October 2008 to December 2008. The said notification was issued under Rule 5 of Export of Service Rules, 2005. The said rebate claim was filed on 26.08.2009. They declared in the said rebate claim that they had received payment against said services exported and also enclosed copy of service tax return filed for the period from October 2008 to March 2009 disclosing payment of service tax on exported services. Appellant was issued with a show cause notice dated

15.12.2009. It was alleged in the show cause notice that though the appellant had produced copies of invoices along with copy of FIRC for the period of export proceeds, there was no correlation between the exported services and Foreign Inward Remittance Certificate (FIRC). In the said show cause notice, copy of the agreement with client was called for verification of the fact that the services were provided outside India. There was also issue raised in respect of the classification of services. Appellant replied to the show cause notice enclosing copies of the input services (selective), copies of agreements with clients outside India and also submitted correlation of export invoices and FIRC. Appellant also explained about the delay in amending registration for certain services. Appellant also attended personal hearing. Original authority decided the said rebate claim through order-in-original dated 28.04.2011. The original authority through the said order has held that the appellant was not eligible for availing and utilizing Cenvat credit because of delay in amendment of registration. He has also held that the appellant had not submitted statement showing correlation between invoice and receipt of convertible foreign exchange remittance. He has also held that documentary evidence to show that the services were rendered outside India was not furnished with documentary evidence. He has, therefore, rejected the refund claim. Aggrieved by the said order, appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through the impugned order-in-appeal. Learned Commissioner (Appeals) upheld the order passed by the original authority. Aggrieved by the said order, appellant is before this Tribunal.

2. We have heard learned counsel for the appellant. Learned counsel for the appellant has brought our attention to the reconciliation statements which were submitted by the appellant before the original authority and subsequently the same were again compiled in more comprehensive form where the invoices covered by individual FIRC were presented in a tabular form to facilitate establishment of receipt of export proceeds in respect of each invoice. However, such compilation of FIRC wise

invoices was not presented to the original authority by the appellant. He has further stated that in view of the fact that export proceeds were received, there should not be any doubt about the export of services. He has submitted a copy of the ST-3 returns for the relevant period and demonstrated that at column 5B, service tax was paid. The said copy of ST-3 return indicates that the ST-3 return was received by Revenue on 25.03.2009. Learned counsel for the appellant has submitted that the said Notification No.11/2005 requires that the payment for the export of services should be received in convertible foreign exchange and service tax and cess, rebate of which has been claimed have been paid on the taxable services exported. He has submitted that they have fulfilled both the conditions of the said notification and have also relied upon Circular No.112/6/2009-ST dated 12.03.2009 issued by Central Board of Excise and Customs and stated that it is clarified in the said circular about the steps to be taken by the exporter in respect of establishing receipt of convertible foreign exchange through FIRC.

3. Heard the learned AR for Revenue who has submitted that copies of agreements of the appellant with the foreign importers of services is a must for establishing that the services are exported and since the same were not provided in full, the impugned order is tenable in law.

4. We have carefully gone through the record of the case and submissions made. We find that there are only two conditions stipulated in the said Notification No. 11/2005-ST dated 19.04.2005. The said conditions are that the taxable service is required to be exported and payment of the export should be received in India in convertible foreign exchange and that the service tax and cess has to be paid on taxable services exported to be eligible to claim rebate of the said paid taxes. While dealing with the rebate claim under the said notification, there is no scope for raising any other issues than the issue related to the said two conditions and if the said two conditions are satisfied, then the rebate claim needs to be sanctioned. We,

therefore, hold that the other issues raised and deliberated in the impugned order such as admissibility of Cenvat credit or delay in amendment of registration etc. have no bearing on admissibility of rebate in the present proceedings. Now we examine whether the above two conditions are satisfied by the appellant. We find through the proceedings that there is no dispute on the fact that the appellant had paid service tax in respect of which the appellant had applied for claim of rebate. Therefore, now the only condition that needs to be satisfied is whether the appellant had received convertible foreign exchange in respect of the claims made by them. We understand that unless convertible foreign exchange has been received, the rebate in respect of such invoice cannot be granted to the appellant. We have also gone through the said circular dated 12.03.2009. The said circular also clarifies that wherever FIRCs are issued on consolidated basis, the exporter should submit self-certified statements along with FIRC showing the details of export in respect of which a particular FIRC pertains. It also requires the exporter to maintain register showing running account which should be reconciled between the export and the remittance received periodically. It, therefore, emerges that unless it is established that against every invoice convertible foreign exchange has been received, the rebate of service tax paid in respect of that invoice cannot be allowed to the exporter. During the hearing, appellant had produced FIRC wise list of invoices establishing that against a particular FIRC, various invoices were covered through which service tax was paid. However, this compilation was not submitted to the original authority. We, therefore, find it fit to remand the matter to the original authority with a direction not to raise any other issue and examine receipt of convertible foreign exchange against individual invoices or set of invoices covered by the rebate claim and if such foreign exchange is received, then to that extent to allow the rebate. For facilitating the original authority to carry out the said directions, we set aside the impugned order and allow the appeal by way of remand. Appellant is also directed to co-operate with the Revenue authorities.

5. In above terms the appeal is allowed by way of remand.

(Order pronounced in the open court on 12.09.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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