CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85864 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

WITH

Service Tax Appeal No. 85865 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85866 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85868 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85870 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85871 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85872 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85873 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

AND

Service Tax Appeal No. 85874 of 2018

(Arising out of Order-in-Appeal No. PK/256 to 264/ME/2017 dated 24.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai)

M/s Western Union Services India Pvt. Ltd. .... Appellant
Fortune 2000 Building, Ground Floor, Unit No. G-101,
Bandra Kurla Complex, Bandra (E), Mumbai – 400051

Versus

Commissioner of GST & Central Excise, Mumbai .... Respondent
9th Floor, Lotus Info Centre, Near Parel Station,
Parel (E), Mumbai - 400012

Appearance:

Shri Rajan Mishra a/w Shri Suryakant Singh, Advocates for the Appellants

Shri Piyush Bade, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87128-87136/2023

Date of Hearing: 08.11.2023

Date of Decision: 09.11.2023

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellants are engaged in providing the output services, under the taxable category of

'management or business consultant service', 'business support service', and 'information technology software service' defined under clauses (r), (zzzq) and (zzzze) of Section 65(105) of the Finance Act, 1994 respectively. The appellants avail CENVAT credit of service tax paid on the input services which are used in the provision of output services. During the period from October, 2012 to March, 2015, the appellants had exported the output services in terms of Rule 6A of Service Tax Rules, 1994 without payment of service tax. Since, there was no occasion for utilization of cenvat credit availed on input services, owing to the reason of export of output services, the appellants had filed the refund applications under Rule 5 of the Cenvat Credit Rules, 2004 claiming refund of accumulated cenvat credit of Rs.2,09,90,651/- available in their books of accounts. Nine numbers of refund applications filed by the appellants were adjudicated by the original authority by different adjudication orders. The original authority had sanctioned the refund claims partly and denied such benefit in respect of the input services amounting to Rs.1,82,60,528/-. On appeal against the said adjudication orders, the learned Commissioner (Appeals) vide Order-in-Appeal Nos. PK/256-264/ME/2017 dated 24.11.2017 (for short, referred herein as 'the impugned order') has allowed the refund benefit in some of the input services and denied the benefit for an amount of Rs.41,93,540/-on the grounds that for the period January, 2014 to March, 2014, the details of FIRC were not submitted by the appellants either before the original authority or the first appellate authority; and that some of the disputed input services had no nexus with the output services exported by the appellants. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

2. Heard both sides and perused the case records.

3. We find that the original authority had denied the benefit of refund on the ground of limitation provided under Section 11B of the Central Excise Act, 1944 made applicable to the service tax matters under Section 83 of the Finance Act, 1994. In appeal, the learned Commissioner (Appeals) had negated the original order, holding that the relevant date for reckoning the limitation for filing refund application under Section 11B *ibid*, would be the date of receipt of payment in convertible foreign exchange by the exporter-appellants and in case

where payment for the service had been received in advance, then the same would be the date of issue of invoice. Accordingly, he has partly allowed the refund benefit, except for the period January, 2014 to March, 2014, where the entire amount of refund claim was rejected on the ground that no details of Foreign Inward Remittance Certificates (FIRCs) were submitted by the appellants. However, on perusal of the case records, more particularly the refund application filed by the appellants on 23.12.2014, we find that the appellants had specifically stated therein that the consideration for provision of the services exported have been received by them in convertible foreign currency and that proof of such payments were also annexed to such application. We also find that the receipt of such refund application dated 23.12.2014 had been duly acknowledged by the jurisdictional Service Tax Division office. Thus, we are surprised to know as to how, both the authorities below were not aware about availability of the copies of the FIRCs and other related documents for consideration of the refund benefit in favour of the appellants. Since, verification of the FIRC etc., has to be done at the original stage, we are of the view that the matter should be remanded back to the original authority for the limited purpose of verification of such documents and for sanction of the refund claim in favour of the appellants, if due, as per law. Therefore, the impugned order rejecting the refund claims filed for the period January, 2014 to March, 2014, is set aside and the appeal is allowed by way of remand to the original authority for verification of the FIRC and other documents and for consideration of the refund benefit thereafter.

4. We find that the learned Commissioner (Appeals) has also rejected the refund claims on the ground that the disputed services cannot be considered as 'input service' defined under Rule 2(l) *ibid* and that there is no nexus between the input services and output services. It is an undisputed fact in this case, that taking of Cenvat credit on the disputed services was never questioned by the department, which is evident from the fact that no proceedings were initiated under Rule 14 *ibid*, for recovery of the alleged irregular cenvat credit. Since, availment of cenvat credit by the appellants were not under dispute, claiming of refund of such credit on account of exportation of output services cannot be questioned inasmuch as Rule 5 *ibid*, nowhere specifies for establishment of nexus or otherwise for sanction of the refund benefit. Since, the requirement of Rule 5 *ibid* has been duly complied with, being

not questioned by the department, in our considered opinion, denial of the refund claims on such grounds cannot be sustained. Grant of refund under Rule 5 *ibid*, is subjected to compliance only on the basis of the formula laid down therein and not otherwise. The other provisions in the Cenvat statue cannot be borrowed to adjudicate the issue of refund, in the case of exportation of taxable output services. The true scope and meaning of Rule 5 has also been clarified by the Tax Research Unit (TRU) in the Ministry of Finance vide Circular dated 16.03.2012. It has been clarified therein that for the purpose of grant of refund on account of exportation of the services, the department has to look into the issue of adherence of the formula prescribed in the statute alone. The relevant paragraph in the said Circular is extracted herein below:

> *"F. Cenvat Credit Rules, 2004:*
> *F.1 Simplified scheme for refunds:*
> *1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties of taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover".*

5. We find that by placing reliance on the Circular dated 16.03.2012, this Tribunal in the case of *Acceleya Kale Solutions Ltd. Vs. Commissioner of CGST, Thane* – 2019 (369) E.L.T. 803 (Tri.-Mumbai), has allowed the benefit of refund of Cenvat credit availed on input services, holding that the nexus aspect cannot be questioned while dealing with the refund applications filed under Rule 5 *ibid*. Hence, the impugned order upholding rejection of refund applications on the ground of non-establishment of nexus cannot stand for judicial scrutiny. Accordingly, we allow the appeals in favour of the appellants on the ground that grant of refund benefit is not subjected to compliance of the provisions of Rule 2(l) *ibid* and denial on the ground of non-establishment of nexus between the input services and the output services under Rule 5 *ibid*, is not sustainable.

6. The appeals are disposed of in above terms.

(Pronounced in open court on 09.11.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha