CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20400 of 2020

[Arising out of Order-in-Appeal No. 386/2020 dated 28/08/2020 passed by the Commissioner of Central Tax, Bangalore-I (Appeals)]

General Motors Technical Centre India Pvt. Ltd.
3rd Floor, Creator Building, International Tech Park, Whitefield Road
Bangalore – 560 066
Karnataka

Appellant(s)

VERSUS

Commissioner of Central Tax, Bengaluru East
BMTC Building
Old Airport Road, Domlur,
Bangalore – 560 071
Karnataka

Respondent(s)

Appearance:

Ms Sudheeshna Banerjee, Advocate
Lakshmi Kumaran & Sridharan
World Trade Centre No.404-406, 4th Floor, South Wing Brigade Gateway Campus No.26/1, Dr. Rajkumar Road,
Bangalore - 560 055
Karnataka

For the Appellant

Mr. P. Rama Holla, Superintendent (AR)

For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20100 / 2021

Date of Hearing: 01/04/2021
Date of Decision: 01/04/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 28/08/2020 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has allowed the appeal of the appellant to the extent of allowing cenvat credit of Rs. 34,250/- (Rupees Thirty Four Thousand Two Hundred and Fifty only) availed in respect of Technical Consultancy Services and with regard to other input services, the order of rejection by the original authority has been upheld. Briefly the facts of the present case are that the appellant is registered with the Service Tax Department and is engaged in providing Consulting Engineer Services to their clients/customers located outside India and are availing the facility of cenvat credit of service tax paid on input services which are required for providing the resultant output service as per the provision of Cenvat Credit Rules, 2004. Appellant filed a refund claim for Rs. 4,26,79,323/- (Rupees Four Crore Twenty Six Lakhs Seventy Nine Thousand Three Hundred and Twenty Three only) on 20/09/2016 for refund of unutilized cenvat credit in respect of service tax paid on various input services said to have been used for providing output services exported outside India relating to the period October 2015 to December 2015 as per the provisions of Notification No. 27/2012-CE (NT) dated 18/06/2012 read with Rule 5 of Cenvat Credit Rules, 2004. After following the due process, the original adjudicating authority vide Order-in-Original dated 21/06/2018 granted refund of Rs. 4,15,49,358/- (Rupees Four Crore Fifteen Lakhs Forty Nine Thousand Three Hundred and Fifty Eight only) and rejected the balance claim amounting to Rs. 11,29,965/-(Rupees Eleven Lakhs Twenty Nine Thousand Nine Hundred and Sixty Five only) considering it to be ineligible cenvat credit on certain services. Aggrieved by the said order, appellant filed appeal before the Commissioner who upheld the order of the original authority except allowing cenvat credit of Rs. 34,250/- (Rupees Thirty Four Thousand Two Hundred and Fifty only) availed in respect of Technical Consultancy Services and for the

remaining amount of Rs. 10,95,715/- (Rupees Ten Lakhs Ninety Five Thousand Seven Hundred and Fifteen only), the refund claim was rejected mainly on the ground of lack of nexus and for certain services copy of invoice is not produced.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order rejecting the refund in respect of certain input services is not sustainable in law as the same has been passed without properly considering amendment to Rule 5 of Cenvat Credit Rules, 2004 and the Board Circular dated 16/03/2012. She further submitted that the input services on which cenvat credit has been availed have been used for providing the output services and the said services qualified as „input service" for the purpose of refund. She further submitted that post the amendment to Rule 5 of Cenvat Credit Rules, 2004 the phrase "used in relation to manufacture of final product" and the phrase "used in relation to provision of output service" has been consciously omitted by the Legislature and therefore no one to one correlation between the input services and output services is required to be established by an assessee claiming refund under Rule 5 of Cenvat Credit Rules, 2004. She further submitted that the Board vide Circular DOF No. 334/1/2012-TRU dated 16/03/2012 clarified that no correlation is required as the intention of the Government is to allow refund to the exporters and the circulars/clarifications issued on the subject have to be viewed with the objective of allowing the refunds. The learned counsel submitted that the Tribunal has consistently held that no one to one correlation is required between input services and the output services exported and she relied upon the following decisions:

- *24/7 Customer Pvt. Ltd. V. Commissioner of Central Tax, Bengaluru East – 2021-TIOL-160-CESTAT-BANG.*

- *M/s. BNP Paribas India Solutions P. Ltd. V. Commissioner of CGST, Mumbai East- 2020-VIL-176-CESTAT-MUM-ST*
- *Larsen and Toubro Infotech Ltd. V. Commissioner of CGST, Mumbai 2020-TIOL-1535-CESTAT-MUM.*
- *Dow Chemical International (P) Ltd. V. Commissioner of CGST, Navi Mumbai – 2020 (33) G.S.T.L. 424 (Tri.-Mumbai)*
- *K Line Ship Management India Pvt. Ltd. Vs. CGST, Mumbai West 2019-TIOL-100-CESTAT-MUM.*
- *Accelaya Kale Solutions Ltd. V. Commissioner of CGST, Thane – 2019 (369) E.L.T. 803 (Tri.-Mumbai)*
- *Maersk Global Services Centres (India) Pvt. Ltd. Vs. CCGST, Navi Mumbai – 2019-VIL-783-CESTAT-MUM-ST*
- *C.C., C.E. & S.T., Hyderabad-IV V. Hexagon Capability Center India P. Ltd. -2017 (4) G.S. T.L. 14 (Tri.-Hyd.)*

3.1. She also submitted that the Department cannot dispute appellants" eligibility to credit during the refund proceedings and the credit if any sought to be disallowed, has to be disputed by initiation of separate proceedings for recovery under Rule 14 of the Cenvat Credit Rules, 2004. She also submitted that the fact that the appellants were availing credit on the impugned services was in the knowledge of the Department and the appellants have been regularly filing their ST-3 returns for the relevant period and the Department at no stage raised any objections or disputed the availment of cenvat credit and it was only during the adjudication of the refund claim that the Department took the stand that the credit was ineligible. In this regard, she referred to the following decisions:

- *M/s. Gemini Software Solutions Pvt. Ltd. Vs. CCE, Trivandrum – 2020-TIOL-140-CESTAT-BANG.*
- *M/s. LRN Technology and Content Solutions India Pvt. Ltd. Vs. CCE, Mumbai – 2020-TIOL-1665-CESTAT-MUM.*

- *M/s. Convergys India Services Pvt. Ltd. V. CCE & ST, Gurgaon-I CESTAT Chandigarh – 2020-TIOL-1696-CESTAT-CHD.*
- *Verisign Services India Pvt. Ltd. Vs. CST, Bangalore-I: 2018 (12) GSTL 161 (Tri.-Bang.)*
- *Arm Embedded Technologies Pvt. Ltd. V. C.C.E., Cus. & S.T., Bangalore – 2016 (45) S.T.R. 133 (Tri.-Bang.)*
- *Commr. of C.Ex., Vadodara Vs. Transatlantic Packaging Pvt. Ltd. – 2012 (28) S.T.R. 102 (Tri.-Ahmd.)*
- *M/s. Fractal Analytics Pvt. Ltd. Vs. Commr. of GST., Mumbai East – 2019-TIOL-2771-CESTAT-MUM.*
- *Commr. of CGST & C.Ex., Mumbai Vs. Morgan Stanley Investment Mgmt. Pvt. Ltd. – 2018 (363) E.L.T. 1158 (Tri.-Mumbai)*

3.2. Learned counsel also submitted that with regard to different input services, the Tribunal in various decisions has held them to be „input services“. For e.g. learned counsel referred to Maintenance and Repair Service and submitted that the impugned order has travelled beyond the deficiency memo and the Order-in-Original inasmuch as the only case of the Department was that rejection of credit/refund of Management, Maintenance or Repair service was on account of absence of invoices. She further submitted that the service in question was received for maintaining the business premises of the appellants from where the activities of output service of Engineering Consultancy are carried out. Further the maintenance and repair of the office premises as well as the office equipment is vital and essential to enable the appellants to provide output engineering services. She further submitted that the exclusion of works contract service is provided in the definition of „input service“ only relates to works contract service which is used for construction services. She further submitted that the appellants have submitted the relevant invoices

based on which the credit has been availed and has also produced the invoices before this Tribunal and submitted that these services have been held to be „input service“ by the Tribunal in the following decisions:

- *Red Hat India Pvt. Ltd. V. Principal Commissioner of Service Tax, Pune – 2016 (44) S.T.R. 451 (Tri.-Mumbai)*
- *M/s Arris Group India Pvt. Ltd. V. CCE & ST, Bangalore – 2018-TIOL-3361-CESTAT-BANG.*
- *Apotex Research Pvt. Limited V. Commissioner – 2015 (3) TMI 346 - (CESTAT Bangalore)*
- *CST, Bangalore V. Jubilant Biosys Ltd. – 2016 (42) S.T.R. 729 (Tri.-Bang.)*

3.3. Further as far as Rent-a-Cab Services is concerned, the learned counsel for the appellant submitted that the company employees both male and female employees who work in two shifts and as a safety measure, the appellant is duty bound to drop the employees back at home after the second shifts for which cabs are engaged and used and hence these services are used for providing output service and the same gets covered under the main clause of the definition of „input service“. For this, she relied upon the following decision:

M/s. Aban Offshore Ltd. V. Commissioner of GST and Central Excise (Appeals-III) – 2020-TIOL-1377-CESTAT-MUM.

3.4. For Commercial Coaching & Training Services, the learned counsel submitted that the appellant being a knowledge based industry and for providing advice and consultancy on engineering design and research services, the engineers have to be trained consistently and on a regular basis so as to equip them with the necessary technical knowledge and keep them abreast of the latest

developments for providing the output service. Further, the training is also needed for development of the soft skills and leadership abilities of the employees and improving IT understanding of employees. For this service, she relied upon the following decisions:

- *Ace Designers Ltd. V. Commissioner of C. Ex., Cus. & S.T., Bangalore, LTU – 2017 (50) S.T.R. 35 (Tri.-Bang.)*
- *Toyota Kirloskar Motor Pvt. Ltd. V. Commissioner of Central Excise, Customs and Service Tax, Bangalore-LTU – 2015-TIOL-2716-CESTAT-BANG.*

3.5. For Security Agency Services, the appellant has produced the invoices on which credit has been availed. Further, as far as Business Auxiliary Service is concerned, the learned counsel submitted that the appellant uses the services of an agency which is engaged with regard to disposal of the e-waste obtained in using the computers and electrical equipments of the appellant. Since the appellant is engaged in providing consulting engineering service which is rendered using specially designed computers and these computers over a period of time tend to become waste and are to be disposed of as per the norms prescribed by the Government and by specified agencies. As far as Business Support Service is concerned, the appellant being an Export Oriented Unit used services of customs clearing agent to customs clear the imported equipment and goods and the customs clearing agent also provided services in relation to debiting the Customs B-17 bond and transporting the cleared material and also appellant received services from its overseas service providers in the area of material tracking and delivery in Bangalore and all these services are covered under the definition of „input service“ and the invoices of the same have also been produced. As far as courier services are concerned, the learned counsel submitted that the appellant company provides its

engineering design services to clients in USA and in the course of providing the output services, various couriers are required to be sent to the client/received from the client as well as local vendors and service providers and the concerned invoices have also been produced and relied upon the following decisions:

- *M/s OSI Systems Pvt. Ltd. V. CE, C & ST, Hyderabad-I – 2017-VIL-1099-CESTAT-HYD-ST*
- *M/s. Xilinx India Technology Services Pvt. Ltd. V. CCE & ST, Hyderabad-IV – 2016-VIL-443-CESTAT-HYD-ST*

3.6. With regard to other services which are mentioned as „NA“ in cenvat credit register, appellants did not avail the credit and were not part of the refund application made. The Department has failed in disallowing credit which had not been asked for by the appellant. She further submitted that the Board vide Circular 120/1/2010-ST dated 19/01/2010 in the context of refund under Rule 5 of the Cenvat Credit Rules, 2004 has instructed that in case of incomplete invoices a liberal view has to be taken. She also submitted that intention of the Government is not to export duties and taxes along with the export of goods or services.

4. On the other hand, the learned AR reiterated the findings in the impugned order and submitted that with regard to Rent-a-Cab service, the appellant is not entitled to the refund because the said service has been excluded from the definition of „input service“ by way of exclusion clause and for this service, he relied upon the following decisions:

- *M/s. Integra Software Services Pvt. Ltd. Vs. Commissioner of GST & Central Tax, Puducherry – 2018 (10) TMI 765 – CESTAT Chennai*

- *Deutsche CIB Centre P. Ltd. Vs. Commr. of S.Tax-II, IV, V Mumbai, CST-Mumbai (E) – 2019 (8) TMI 261 – CESTAT Mumbai*
- *M/s. Sai Life Sciences Limited Vs. CCE & ST, Hyderabad-IV – 2017 (5) TMI 566 – CESTAT Hyderabad*

5. After considering the submissions of both the parties and perusal of the material on record and after going through the various decisions relied upon by the appellant cited supra, I find that mainly the learned Commissioner has rejected the refund only on the ground of lack of nexus between the input services and the output services which is exported. The learned Commissioner has also observed that with regard to certain services the appellant has not filed the invoices which is not a correct finding because the appellants have filed the invoices and the same has been examined by the original authority and the appellant has also filed the invoices before this Tribunal also. Further, I find that all these services on which the refund has been rejected have been consistently held to be „input services" in various decisions relied upon by the appellant cited supra. Further, I find that it has been consistently held by the Tribunal in various decisions cited supra wherein the Tribunal has taken a view that after the amendment of Rule 5 of Cenvat Credit Rules, 2004, there is no need for one to one correlation between the input services and the output services and moreover the Board Circular dated 16/03/2012 also clarified that no correlation is required because the intention of the Government is to allow refund to the exporters and the Circular/clarification issued on this subject have to be viewed with the objective of allowing the refund. Further, I find that the Department has not questioned the service tax paid on input services at the time when the cenvat credit was taken and as per the decision of this Tribunal in the case of ***K Line Ship Management India Pvt. Ltd. Vs. CGST, Mumbai West 2019-TIOL-100-CESTAT-MUM.,*** it has been held that the

Department is not permitted to question the same at the time of claiming refund. Further in view of the clarification given by the Tax Research Unit of CBEC vide their letter dated 16/03/2012, the amended Rule 5 of Cenvat Credit Rules does not require correlation between the output service exported and the input service used in such output services exported. Further, as far as Rent-a-Cab service is concerned which the Department has disputed on the ground of exclusion, I find that in the present case the appellant has availed the services of Rent-a-cab for the purpose of bringing and dropping the employees and this service has been used for providing the output service and the invoices have been produced by the appellant. The decisions relied upon by the Department in this regard are distinguishable and Rent-a-cab service in the present case has been used for providing the output service and hence gets covered under the main clause of the definition of „input service“. In view of my discussion above and by following the ratio of various decisions cited supra, I allow the appeal of the appellant and hold that the appellant is entitled to refund of cenvat credit of Rs. 10,95,715/- (Rupees Ten Lakhs Ninety Five Thousand Seven Hundred and Fifteen only). The appeal is accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **01/04/2021**)

(S.S GARG)
JUDICIAL MEMBER