Credit of service tax cannot be denied on the ground of 'no nexus with output services'

The Central, Excise and Service Tax Appellate Tribunal, Mumbai (**"the CESTAT"**) in the case of ***M/s. Sequoia Capital India Advisors Pvt. Ltd. v. Commissioner of CGST & Central Excise (Service Tax Appeal No. 87174 of 2019) dated December 01, 2022*** held that the refund of service tax cannot be denied on the ground of input/input services has no nexus with output services.

Facts:

M/s. Sequoia Capital India Advisors Pvt. Ltd (**"the Appellant"**) is engaged in the business of providing financial investment advisory services. The Appellant was only providing services to foreign clients, in other words the Appellant was a service exporter. The Appellant filed refund of Rs. 2,10,44,635/- of services tax for the period of October, 2016 to March, 2017.

The Ld. Adjudicating Authority (**"the Authority"**) vide an Order in Original dated April 17, 2018 (**"OIO"**) rejected the aggregate refund of service tax amounting to Rs. 36,86,969/- of which the amount of Rs. 13,98,099/- on the ground of 'premise not registered' and Rs. 22,88,870/- on the ground of 'no nexus with output services'.

Appellant filed an appeal before the Ld. Commissioner (Appeal) (**"the Commissioner"**) against the OIO. The Commissioner vide the Order dated March 11, 2019 (**"OIA"**) allowed the refund of Rs. 13,98,099/- which was rejected by the Authority on the ground of 'premise not registered'. However, upheld the decision of the Authority of rejection of refund of Rs. 22,88,870/- on the ground of 'no nexus with output service'.

Aggrieved by the impugned OIA of the Commissioner, the Appellant filed an appeal before the Ld. CESTAT contending that since the refund was sought for the period post 2012, the amended provisions of Cenvat Credit Rules, 2004 **("CCR")** should have been followed, which allows the credit of the service tax without insisting on the 'nexus with output service'. Further,

the Appellant also contended that as per Rule 14 of the CCR, the Appellant was not given an opportunity to show cause regarding denial of refund on the ground of 'input has no nexus with export services'.

Issue:

Whether the Authority can reject the refund of service tax on the ground that input or input services does not have nexus with output services?

Held:

The CESTAT held that:

- The Authority have wrongly interpreted the Rule 5 of the CCR which has been amended and does not require to establish nexus between input and output services for claiming credit of service tax.
- In the instant case, the view of the Authority to reject the credit on the ground of 'no nexus' could have been done only by taking recourse to Rule 14 of CCR.
- In the present case, since the Authority has rejected the credit solely on the ground of 'no nexus' which legally does not sustain.
- The Tribunal allowed the appeal and set aside the impugned Order.

Relevant Provisions:

Rule 5 of Cenvat Credit Rules, 2004

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:

Refund amount = (Export turnover of goods+ Export turnover of services) x Net CENVAT credit

Total turnover

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Explanation 1.- *For the purposes of this rule,-*

(1) "export service" means a service which is provided as per rule 6A of the Service Tax Rules 1994, whether the payment is received or not;

(1A) "export goods" means any goods which are to be taken out of India to a place outside India

(2) "relevant period" means the period for which the claim is filed.

Explanation 2.-*For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.]*

Rule 14 of Cenvat Credit Rules, 2004

Recovery of CENVAT credit wrongly taken or erroneously refunded. -

(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

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