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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61292 of 2019

[Arising out of Order-in-Appeal No. 94/ST/CGST-APPEAL-GURUGRAM/SG/2019 dated 31.07.2019 passed by the Commissioner (Appeals) Central GST, Gurugram]

M/s Guardian India Operations Pvt Ltd **……Appellant**
Tower-I, 7th & 9th Floor, Infospace IT/ITES/SEZ Complex, Sector 48, Tikri Sohna Road,
Gurugram, Haryana

VERSUS

Commissioner of Central Goods & Service Tax, Gurugram **……Respondent**
Plot No. 36-37, Sector 32,
Gurugram, Haryana

APPEARANCE:

Shri Sushil K. Verma, Advocate with and Shri Ashok K. Verma, C.A. for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60583/2025

DATE OF HEARING: 07.02.2025
DATE OF DECISION: 30.05.2025

S. S. GARG :

The present appeal is directed against impugned order dated 31.07.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Gurugram, whereby the learned Commissioner (Appeals) has rejected the refund to the appellant.

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2. Briefly stated facts of the present case are that the appellant is a 100% EOU and is engaged in providing the Information Technology Software Service ('ITSS') and Business Auxiliary Service ('BAS') to its clients located outside India. In the course of providing the output services from its Gurugram Office, the appellant has received certain input services namely Renting of Immovable Property Service, Manpower Recruitment or Supply Agency Service, Telecom Service, Management Maintenance or Repair Service, Facility Management Service etc from various service providers and has paid service tax on receipt of the said services. The appellant has also filed the prescribed ST-3 returns for the period October 2016 to June 2017. The appellant has accumulated the Cenvat Credit of Rs.3,00,68,912/- which could not be utilized by the appellant due to the fact that the appellant was 100% EOU. Thereafter, the appellant filed a refund claim of the said amount on 01.03.2018 in terms of the provisions of Rule 5 of Cenvat Credit Rules, 2004 ('CCR, 2004') read with Notification No. 27/2012-CE dated 18.06.2012. After following the due process, the original authority vide Order-in-Original dated 30.01.2019 rejected the entire refund claim. Being aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who vide the impugned order, has rejected the refund claim as follows:

(a) Refund claim of Rs.1,67,04,086/- against Work Contract Service was rejected on the ground that the same is not covered under the definition of 'input service' in terms of Rule 2(l) of CCR, 2004;

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(b) Refund claim of Rs.93,892/- against invoices prior to ST-2 certificate issuance (for the period June 2016 to November 2016) was rejected on the ground that the appellant had not provided any output service during that period;

(c) Entire refund claim of Rs.2,92,85,930/- was rejected on the ground that as the appellant's unit is located in SEZ and therefore, the appellant should have filed the refund claim in terms of Notification No. 12/2013-ST dated 01.07.2013 and not in terms of Rule 5 of the CCR, 2004 read with Notification No. 27/2012-CE dated 18.06.2012.

Aggrieved by the impugned order, the appellant has preferred the present appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.1 As regards the rejection of refund claim of Rs.1,67,04,086/-, the learned Counsel submits that the Commissioner (Appeals) has rejected the refund claim on the ground that the appellant is not entitled to Cenvat Credit against the construction service. He further submits that aforesaid observation made by the Commissioner (Appeals) is merely on the basis of description 'Construction Works –

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Fitout' mentioned under the invoices issued by M/s Jones Lang LaSalle Property Consultants (India) Pvt Ltd. The Commissioner (Appeals) has rejected the refund solely on the basis that there was no existing structure and therefore, the question of modernization, renovation or repair of the same does not arise as the said services will not come to play for something that is fresh or is being done for the first time.

4.1.1 He further submits that the appellant, in fact, took an office on lease from M/s Candor Gurgaon One Reality Projects Pvt Ltd vide Lease dated 18.08.2016 and took up the modernization/renovation work as per the agreement between the two, wherein the detailed list of work packages undertaken for various interior and ceiling finishing works, which fall within the definition of 'input service' under Rule 2(l) of CCR, 2004, was attached.

4.1.2 He further submits that the Cenvat Credit of Rs.1,67,04,086/-, paid by the appellant as service tax against the said services, is rightly admissible as modernization, renovation or repair service which has been specifically included in the inclusive part of the definition of 'input service'. He further submits it is a settled legal position that substance of the transaction should be deliberated upon and not the nomenclature. In support of this submission, he relies on the following decisions:

- Faqir Chand Gulati vs. Uppal Agencies Private Limited – 2008 (12) STR 401 (SC)
- Super Poly Fabriks Ltd vs. CCE – 2008 (10) STR 545 (SC)

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4.1.3 The learned Counsel also submits that Rule 5 of CCR, 2004 was substituted vide Notification No. 18/2012-CE dated 17.03.2012 and the said substituted rule has prescribed the formula for claiming a refund of service tax by the service provider. He also submits that under the amended rule, there is no requirement of satisfying the nexus between the input services and the output services provided by the service provider.

4.2 As regards the rejection of refund claim of Rs.93,892/-, the learned Counsel submits that the Commissioner (Appeals) has rejected the said refund claim against the invoices pertaining prior to the date of issuance of ST-2 certificate. The learned Counsel further submits that non-registration of the unit cannot be a basis for denial of refund especially when there is no such condition in the Notification for allowing benefit of Cenvat Credit in terms of Rule 5 of CCR, 2004. He further submits that it is not in dispute that the subject services have been received by the appellant and the appellant has paid service tax thereon. In this regard, he relies on the following decisions:

- mPortal India Wireless Solutions P. Ltd vs. CST, Bangalore – 2012 (27) STR 134 (Kar.)
- CST, Noida vs. Atrenta India Pvt Ltd – 2017 (4) TMI 563 Allahabad High Court

4.3 As regards the rejection of entire refund claim of Rs.2,92,85,930/-, the learned Counsel submits that the Commissioner (Appeals) has rejected the said refund claim on the ground that being located in an SEZ, the appellant should have filed the refund claim in terms of Notification No. 12/2013-ST dated

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01.07.2013 and not in terms of Rule 5 of the CCR, 2004 read with Notification No. 27/2012-CE dated 18.06.2012. The learned Counsel further submits that the appellant being of the *bona fide* belief that being a regular assessee, it was required to file the present refund claim in terms of regular refund provisions provided under Rule 5 of CCR, 2004 read with Notification No. 27/2012-CE dated 18.06.2012, and not in terms of Notification No. 12/2013-ST dated 01.07.2013 which is applicable for special category of assessees. He further submits that SEZ provisions provide special facilities/convenience to the assessee and these are optional in nature and not mandatory and it is upon the appellant to whether to file the refund claim under SEZ provisions or under the provisions applicable for a regular assessee and in this case, the appellant decided to go with regular provisions.

4.3.1 He further submit that it is only a procedural lapse on the part of the appellant, for which substantial benefit cannot be denied. In this regard, he relies on the following decisions:

- M/s Mangalore Chemicals And Fertilizers Ltd vs. Deputy Commissioner – 1991 (55) ELT 437 (SC)
- M/s Laxmi Organic Industries Ltd vs. CCE, Raigad – 2017 (5) TMI 665 CESTAT MUMBAI
- M/s Doshion Limited vs. CCE, Ahmedabad – 2012 (10) TMI 952 CESTAT AHMEDABAD

4.3.2 He further submits that the appellant is exclusively engaged in export of services and has duly discharged the service tax liability and claimed Cenvat Credit which cannot be denied as

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per the provisions of Rule 5 of CCR, 2004 read with Notification No. 27/2012-CE dated 18.06.2012.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record.

7. As the issue, regarding **the rejection of refund claim of Rs.1,67,04,086/-**, is concerned, we find that the said refund was rejected only on the ground that the impugned services availed by the appellant are not input services; whereas, perusal of the services availed by the appellant as mentioned in the scope of services, clearly proves that the services availed by the appellant are used in relation to modernization, renovation and repair of an existing leased office and therefore, these services fall within the definition of 'input service' as defied under Rule 2(l) of the CCR, 2004.

7.1 Further, we find that it is a settled law that one-to-one correlation is not required in law to claim a refund. While interpreting Rule 5 of the CCR, 2004, the Mumbai Bench of this Tribunal in the case of **M/s Cross Tab Marketing Service Pvt Ltd vs. CGST, Mumbai East – 2021-VIL-466-CESTAT-MUM-ST**, has held that the amended Rule 5 does not require establishment of any nexus between input and export services. The rule only provides that the admissible refund will be proportional to the ratio of export turnover of goods and services to the total turnover, during the

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period under consideration and the net Cenvat Credit taken during that period. Indisputably, in the refund proceedings under Rule 5 as amended, any such attempt to deny or to vary the credit availed during the period under consideration is not permissible. If the quantum of the Cenvat Credit is to be varied or to be denied on the ground that certain services do not qualify as input services or on the ground of 'no nexus', then the same could have been done only by taking recourse to Rule 14. Further, we find that it is a settled legal position that in the absence of any notice for recovery as provided under Rule 14, the refund claimed by the assessee under Rule 5, cannot be denied.

7.2 Further, we find that the amended provisions of Rule 5 of CCR, 2004 have also been clarified by the Tax Research Unit of the Department of Revenue vide Circular dated 17.03.2012 wherein it has been stated that the nexus between the input service used in export of service should not be insisted upon and the benefit of refund should be granted on the basis of the ratio of export turnover to total turnover demonstrated by the assessee.

8. As the issue, regarding **the rejection of refund claim of Rs.93,892/-** on the ground of non-registration of the unit, is concerned, we find that the refund cannot be denied only on the basis of non-registration of the unit as held by the Hon'ble Allahabad High Court in the case of **CST, Noida vs. Atrenta India Pvt Ltd** (supra).

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9. As the issue, regarding **the rejection of entire refund claim of Rs.2,92,85,930/-**, is concerned, we find that the entire refund was rejected on the ground that the claim had not been filed as per Notification No. 12/2013-ST dated 01.07.2013, but filed as per Notification No. 27/2012-CE dated 18.06.2012. In this regard, we find that it was a procedural lapse on the part of the assesse and it has been consistently held by various Courts that substantive benefit cannot be denied on technical reasons/procedural lapse. Here, we may refer to the decision of the Principal Bench of this Tribunal in the case of **Lupin Ltd vs. CGST – (2023) 9 Centax 325 (Tri. Del.)** wherein it has been observed as under:

> **"19.** We may also like to note that the general principles of interpretation of the exemption notification that it has to be construed strictly shall not really apply to the SEZ units which are otherwise exempted from the liability of the various duties under the main statute itself. The avowed object of providing such exemptions has to be the guiding principle for the applicability and the interpretation of the Notification to the SEZ units.
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> **20.** ----
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> **21.** From the aforesaid, it is evident that the appellant fulfilled the criterias of eligibility to claim refund of the service tax paid on input services in terms of the Notification No 12/2013-ST. In fact it is not the case of the revenue that the appellant is not eligible to make such claims. Their only objection is to the claim being filed beyond the period of one year as per the notification. We are of the considered opinion that once the appellant is found to be eligible

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to claim the refund, the substantive conditions are complied with and the condition of time limit for making the claim under the notification being only a procedural requirement, needs to be construed liberally. Considering the beneficial object of establishing the SEZ tax free, without any burden of duties, the procedural lapse, if any, cannot be the basis to deny the refund to the appellant. The exemption is intended to be absolute is further evident from para 3 (II) of the Notification which provides for ab-initio exemption. This strengthens our conclusion that the SEZ Act and the Rules read with the notification is intended to be a beneficial policy for the SEZ, therefore has to be construed liberally. In our view we are supported by the decision of the Apex Court in *Government of Kerala & Anr.* v. *Mother Superior Adoration Convent* (*supra*), where it has been held that the beneficial purpose of the exemption must be given full effect to and before interpreting a statute, "we must first ask ourselves what is the object sought to be achieved by the provision and construe the statute in accordance with such object". The Court went ahead to hold that in the event of any ambiguity in such construction, such ambiguity must be in favour of that which is exempted. On the principle that there is a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having the purpose of encouragement or promotion of certain activities, the Court relied on several decisions. It is relevant to quote the para from the said judgment:

> "16. However, there is another line of authority which states that even in tax statues, an exemption provision should be liberally construed in accordance

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> with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has come beneficial reason behind it. In such cases, the rationale of the judgements following *Wood Papers* (*supra*) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific pubic interest is furthered."

9. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 30.05.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi