CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.71075 of 2018

(Arising out of Order-in-Appeal No.36-37-COMMR-MEERUT-2018, dated - 27/04/2018 passed by Commissioner (Appeals) CGST, Meerut)

M/s HCL Technologies Limited **.....Appellant**
(A-10 & 11, Sector 3
Noida, UP-201301)

VERSUS

Commissioner, Service Tax, Noida **....Respondent**
(C-56/42, Sector 62, Noida-U.P.)

WITH

Service Tax Appeal No.71076 of 2018

(Arising out of Order-in-Appeal No. 36-37-COMMR-MEERUT-2018, dated - 27/04/2018 passed by Commissioner (Appeals) CGST, Meerut)

M/s HCL Technologies Limited **.....Appellant**
(A-10 & 11, Sector 3
Noida, UP-201301)

VERSUS

Commissioner, Service Tax, Noida **....Respondent**
(C-56/42, Sector 62, Noida-U.P.)

APPEARANCE:
Shri Atul Gupta, Advocate &
Ms. Ushmeet Kaur Monga, Advocate for the Appellants
Shri. Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NOs.-70497-70498/2025

DATE OF HEARING : 14 July, 2025
DATE OF PRONOUNCEMENT : 17 July, 2025

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Appeal No.36-37-COMMR-MEERUT-2018, dated 27/04/2018 of the Commissioner (Appeals) CGST, Meerut. By the impugned order, order in original disallowing CENVAT Credit, in respect of certain input services namely GYM equipment/ body grooming blade trimmer, event management services, garden maintenance services, charges for tea, coffee and food/ Guest House charges and yoga work shop and laundry charges, service insurance description of service not given on invoice, Charges for MWC 2016 booth Barcelona/ stand construction, invoices issued in respect of unregistered premises or registered later, address of premises not mentioned on the invoices etc.

2.1 Appellant is engaged in providing taxable services namely 'Information Technology Services', 'Maintenance and Repair Services', 'Technical Testing and Analysis Service' and 'Business Support Services'.

2.2 The Appellant was exporting Information Technology Software Services and Business Support Service and availing Cenvat Credit of the service tax paid on input service.

2.3 They were filing refund claims in terms of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012- CE (NT) dated 18.06.2012, for claiming the cash refund Cenvat Credit availed by them in respect of input/ input services received by them for providing the taxable services exported. The appellant filed refund claims for the quarter October 2015 to December 2015 and January 2016 to March 2016. These refund claims were partially rejected holding that the CENVAT Credit as claimed by the appellant was not admissible. Details of Orders-in-Original disallowing the claim is as follows:-

Appeal No	Period	Date of claim	Order in Original Date	Refund Disallowed
ST/70175/2018	October 2015 to December 2015	29.07.2016	28.02.2017	1,40,11,676
ST/70176/2018	January 2016 to March 2016	28.10.2016	31.03.2017	91,15,841

2.4 Appellant had filed the refund claim after debiting the amount claimed as refund in terms of Rule 5 as per the conditions prescribed by the Notification No 27/2012-CE(NT). Therefore for the amount of refund disallowed appellant re-credited their CENVAT Account.

2.5 Aggrieved by the Orders-in-Original appellant filed the appeal before the Commissioner (Appeals) which were disposed of by the impugned order.

2.6 Aggrieved appellant have filed these appeals.

3.1 We have heard Shri Atul Gupta, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits:

- In the present case impugned order upholds the denial of refund claim made in terms of Rule 5 of CENVAT Credit Rules, 2004 by holding that certain CENVAT Credits were not admissible.
- Such an approach is not as per the provisions of the CENVAT Credit Rules, 2004 as no proceeding for denial of the credit have been initiated in terms of Rule 14 of the CENVAT Credit Rules. It has been constantly held that in proceedings of refund under Rule 5 ibid, the refund could not have rejected by holding that certain credits are inadmissible without invoking the provisions of Rule 14. Reliance is placed on the following decisions:
    - M/s HCL Technologies Ltd., [2023 (10) TMI 959 - CESTAT ALLAHABAD]
    - HCL Comnet Systems and Services [2016 (8) TMI 1236-CESTAT ALLAHABAD] affirmed by the Hon'ble Allahabad High Court vide 2017 (12) TMI 1661 – Allahabad High Court
    - Free Scale Semiconductors India (P.) Ltd. Final Order No. A/70385/2017-EX dated 10.04.2017 of CESTAT, Allahabad
    - Indo Solar Ltd. [2017 (357) E.L.T. 915 (Tri-All)]

- Allied Chemical & Pharmaceuticals Pvt. Ltd. [2019 (2) TMI 849 – CESTAT NEW DELHI]
- Computer Science Corporation India Pvt. Ltd. [2017 (7) TMI 760 - CESTAT ALLAHABAD]
- Free Scale Semiconductors India (P) Ltd., [2017 (4) TMI 1238 - CESTAT ALLAHABAD]
- EXL Service. Com (India) Pvt. Ltd. [2017 (8) TMI 1002 – CESTAT Allahabad]
- M/s Gemini Software Solutions Pvt. Ltd [2020 (1) TMI 844 - CESTAT BANGLORE]
- Macnair Exports (P) Ltd. [2002 (142) E.L.T. 593 (Tri-Bangalore)]
- Macnair Exports (P) Ltd., 2013 (152) E.L.T. A87 (S.C)
- Nylex Traders [2011 (274) E.L.T. 71 (Tri-Mumbai)]

➢ Appellant shall be entitled to interest for delay in deciding the refund on the amount for which refund was rejected.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Chronology of events leading to the present appeals as admitted by the appellant is as stated in the tables below:

Dates and Events of Service Tax Appeal No.71075 of 2018			
S. No.	**Dates**	**Events**	**Amount (in Rs.)**
1.	**29.07.2016**	Refund Application filed *(for quarter Oct. 2015 to Dec. 2015)*	10,00,00,000
2.	**02.09.2016**	Refund claim withdrawn by the party pertaining to Life Insurance	55,06,248
3.	**14.12.2016**	Refund Sanctioned by the adjudicating authority *vide Order-in-Original no. 73/R/AC/STD-I/2016-17*	8,69,90,800
4.		REFUND REJECTED [S.no. 1 – (S.no. 2+ S.no. 3)]	**75,02,952**
5.	**14.12.2016**	Show Cause Notice was issued for denying Cenvat credit of Rs. 1,40,23,838/- wrongly stating the rejection of refund of the same amount.	
6.	**28.02.2017**	Order-in-Original was issued disallowing Cenvat Credit of Rs. 1,40,23,838/- but stating the same as rejection of refund.	
7.	**28.02.2017**	After disallowance of the refund claim vide Order-in-Original, the Appellant took back the credit to extent to	

		which refund claim was rejected i.e., Rs. 75,02,952/-

Dates and Events of Service Tax Appeal No.71076 of 2018			
S. No.	**Dates**	**Events**	**Amount (in Rs.)**
1.	**28.10.2016**	Refund Application filed *(for quarter January 2016 to March 2016)*	8,70,00,000
2.	**23.02.2017**	Refund Sanctioned by the Adjudicating Authority *vide Order-in-Original no. 152/R/DC/STD-I/2016-17*	7,88,42,899
3.		REFUND REJECTED [S.no.1 – S.no.2]	**81,57,101**
4.	**23.02.2017**	Show Cause Notice was issued for denying Cenvat credit of Rs. 91,15,841/- wrongly stating the rejection of refund of the same amount.	
5.	**31.03.2017**	Order-in-Original was issued disallowing Cenvat Credit of Rs. 91,15,841/- but stating the same as rejection of refund.	
6.	**31.03.2017**	After disallowance of the refund claim vide Order-in-Original, the Appellant took back the credit to extent to which refund claim was rejected i.e., Rs. 81,57,101/-	

4.3 Impugned order records findings as follows:

"9. It is evident that for examining the admissibility of credit of service tax paid on impugned services, the use of the said services and their impact on out put services is of much significance. Accordingly, I will now take up individual input services/ issues covered in the impugned appeals as mentioned in para 3 above.

(1) Rent for car parking and canteen (Rs.79052/-+31852/-):- The appellant has pleaded that the party has taken premises on rent for car parking and providing canteen services to their employees and these are being used for the smooth functioning of the office. I observe that parking and canteen are essential for every organization I also find that Hon'ble Tribunal has allowed credit on such services in many cases. Therefore I find that these are eligible for credit as input service and also for refund.

(2) GYM equipment/body grooming blade trimmer (Rs. 7402/- & Rs. 4205/-): I find that exclusion clause (C) to Rule 2(1) excludes following services from the purview of flupul service-

"(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery,

membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employee on vacation such as Leave or Home Travel Concession, when such service are used primarily for personal use or consumption of any employee.

I observe that Gym equipment / body grooming blades meant for GYM are for personal use of the employees and has no nexus with output services provided by the company to its clients. Therefore. I hold that it is not eligible for credit as input service.

(3) Photocopy, binding, printing charges (Rs.1.66.212/- +2,77,839/--As regards credit on the printing, photocopying and binding charges, I find that such activities are part of routine work of the office and the said charges have nexus with output service provided by the appellant and as such are eligible for credit as input service and for refund.

(4) Event management service (Rs. 21,46,870/- Rs.10,64,999/-)

Reman

I observe that the adjudicating authority had denied the credit on the basis that such services were for personal use of employees. The appellant has contended that they had organized events for conveying the business policy and the system to its employees, which are used for augmentation of the business of Company. The events were attended by the employees of the Appellant. The event had been organized in respect of sales promotion, staff development and other managerial activities.

I find that Hoard's Circular dated 19.01.2010 referred earlier makes it clear that credit can not be allowed on event management services which are recreational in nature. Credit on such service can be allowed only if these are of such nature that they impact the efficiency in providing output services. The appellant has claimed that these events were organized in

respect of sales promotion and staff development activities. However, they have not submitted any document to show the nature of such events. I observe that unless the nature of event is such that they will increase the efficiency in providing output services, credit and consequential relief can not be allowed. I remand the matter to the original authority to ascertain the nature of events and pass fresh order accordingly.

(5) Garden Maintenance Services/Charges for Tea coffee and food/Guest House charges and Yoga workshop and laundry charges (Rs.5460/-+4760/-+9775/-+10788/-)- I find that above noted Circular No. 120/01/10 dated 19.01.2010 clarifies that "On the other hand, activities like event management such as company sponsored dinners/picnics/tours, flower arrangement, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not impact the efficiency in providing output services, unless adequate justification is shown regarding their need".

Appellant has stated that the services are related to gardening. supply of tea coffee and food for company sponsored dinners/ lunch, voga, laundry, and guest house maintenarice and booking of hotel halls for functions etc. I observe that these services have no nexus with export of output services as the absence of such input service would not adversely impact the quality and efficiency of the provision of service exported Accordingly, I hold that above services would not be eligible for credit and consequential refund.

(6) Domestic courier charges (Rs. 4,81,104/-+1,16,248/-):- The appellant has contended that Domestic Courier Services were used. for dispatching documents to various units and offices of the appellant. The stand taken by the department is also same. No doubt in routine work such communication to various related parties e.g. suppliers service provides etc is essential and its absence would adversely affect the efficiency of the company. Further, credit on courier service was allowed in their own case

vide OIA NO. 356/16-17 dated 21.02.17. Hence I hold that the credit on the same is admissible.

(7) Charges for creative design Charges for Video Creation agenda Design. Info graphic charges, Digital photography, and creative services (Rs.30800/-+118851/-+ 122639/-+ 355543/-+ 3022/-+32418/- +113520/-):- Appellant has claimed that these services are used for the purpose of various internal projects. These were used in relation to training and coaching to its employees and for generation of new innovative ideas for business promotion. Design/info graphic and Digital photography are used for presentation for marketing purposes. I find that keeping in view the nature of output service namely "Information Technology Software Services" provided by the appellant their submissions are quite satisfactory as use of such services have nexus with output services. Accordingly, I allow the credit and consequential relief on these services.

(8) Servico insurance description of service not given on invoice (Rs.17,472/-):- The appellant has pleaded that it pertains to art insurance taken from ICICI Lumbard with reference to painting used in conference hall. I find that insurance of a painting has no nexus with export of service and its absence would not have adverse impact on the output service. Hence in terms of Boards Circular No No. 120/01/2010-ST dated 19.01.2010 the same is not eligible for credit and consequential refund.

(9) Charges for MWC 2016 booth Barcelona/stand construction (2,87,463/-):- The appellant has claimed that they had organised some event for which equipments like hand mike, smoke machine, DV camera/ cassettes, photographer/local performer were used. Use of local performer, smoke machine, Mike etc. It is understood that the event is recreational and such equipment can not be part of any business training to employees Hence I hold the same has no nexus with output services and credit as well as resultant refund is not admissible to them.

(10) Credit on the strength of invoices issued to unregistered premises (Rs.1,02,05,835/-139,40,262/-) - 1 observe that the appellant has categorized the total amount into three categories as under:-

(a) Invoices issued for premises at the addresses already registered: The appellant has contended that in appeal No.960, of 2016-17 invoices involving credit of Rs. 8,72,014/-and in appeal NO. 448/16-17 invoices involving credit of Rs. 24,71,915/- were for the premises at registered address in ST-2 dated 01.12.2013. In support of their claim they stated to have attached relevant ST-2 certificate as Annexure-8 & 7 respectively. No such documents have been found attached from which the claim of the appellant could be verified. However, I do not find it proper to blindly reject the appellants submission. In the interest of justice I remand the matter to original authority to verify credit of said amount of Rs. 8,72,014/- (appeal No. 960) and Rs. 24,71,915/- (appeal NO.448). Appellant is directed to submit the said registration certificates, relevant bills and other supporting documents for verification to original authority. If the premises to which the said invoices were issued, were registered as on the date of issue of invoices and the input credit is otherwise admissible, the credit and consequential refund will be admissible to the appellant.

(b) Premises registered later on and unregistered premises:- The appellant has stated that in appeal No.960 of 2016-17- invoices involving credit of Rs. 81,09,203/- & Rs. 11,25,834/- were for premises registered on 26.02.2016 and 31.01.2017 respectively.

The refund of credit pertains to period October 2015 to December' 2015 i.e. for the period before registration of the said premises. Hence it is an admitted fact that when services were received and used the said premises were not registered. They have further admitted that in case of appeal No.960/ 2016-17, invoices involving credit Rs.98,583/ were received at unregistered address. In case of appeal No. 448/16-17 invoices for Rs. 14,68,347/ were for unregistered address ie. the addresses of HCL Comnet Ltd and ICL Technologies BPO

Services Ltd. B-34/3, Sector 59, Noida They have pleaded that registration is not pre-requisite for refund of input services.

I do not find any force in appellant's contention. CENVAT Credit Rules have been framed under the authority of Section 37 of Central Excise Act'1944. Accordingly, Cenvat credit is admissible only to a registered person and that too on fulfillment of other legal requirements. In case of centralized registration the premises which are not registered can not be considered as registered person. As the party has admitted that credit has been taken on invoices for unregistered premises or on invoices in the name of other legal entities, credit to the appellant and consequential relief is not admissible. I uphold the order of the adjudicating authority to this extent.

(11) Service used at for un-registered premises/rent unregistered premises (Rs.3,79,531/-+13,36,267/-): An amount of Rs, 3,79,531/ in appeal NO. 960 (OIO No.163 dt. 28.02.2017) and Rs. 13,36,267/- in appeal 448 (OIO NO.190 dt. 31.03.2017) are under dispute. The appellant has contended that the premises were registered on 26.10.2015 but has not submitted any documents in support of their claim. I observe that the refund claims in two appeals pertain to Oct. 2015 to December 2015 and January 2016 to March 2016. It need factual verification to the effect whether the said premises were registered and incorporated in registration certificate as claimed by the appellant. If the premises to which the said invoices were issued were registered as on date of issue of invoices and credit is otherwise legally admissible, refund claim will be admissible to the appellant. However, if the said premises were got registered at any later date after receipt of services the credit & refund will not be admissible to them. Accordingly, I remand the matter to original authority for verification of facts and passing fresh order.

(12) Address not mentioned on invoices (Rs. 1,10,776/-):- The appellant has simply stated that credit can not be denied on technical ground. I find that it is substantive requirement under law to mention invoice number, name, address and registration number of service recipient. Rule 4A of Service Tax Rules

provides that each invoice shall contain specified information including the name and address of service provider and receiver. The said information mandated in law is necessary for proper availing credit In this context reliance must be placed on order of Hon'ble High Court of H.P. in case of CCE Vs Spectra Electronics Pvt. Ltd., (2009-235-ELT-795 (III)) where it was observed that the object and purpose of having pre-printed invoices is to check the defrauding of the Government by the assesses by availing double credit on a single consignment. Accordingly, I uphold the order of the adjudicating authority to this extent.

(13) Missing Invoices (Rs. 16,68,714/-): The appellant has pleaded that they are eligilile for refund on the basis of photocopies of the invoices. Under the law credit is allowed on prescribed documents which are invoices in the instant case. In the normal circumstances where an assessee receives original invoice, he is eligible for the credit automatically unless it is found that credit was legally not admissible Where original document is missing an assessee can not claim credit automatically without satisfying the authorities that credit has been rightly availed. Authenticity of documents must be proved to the satisfaction of the authority. Considering the facts and circumstances of the case, I allow credit on the basis of photocopies of the invoices provided the appellant can demonstrate to the original authority that payment for these invoices was made and credit is otherwise legally admissible on the basis of such invoices."

We find that the Appellant is contesting the observations/findings made by the Adjudicating Authority and First Appellate Authority in the impugned orders. In respect of the same situation the Hon'ble Tribunal in the case of **M/s HCL Technologies vs. Commissioner of Central Excise, Noida Final Order No. 70143/2023** where it has held as follows:

"4.7 In absence of any proceedings under Rule 14 of Cenvat Credit Rules, 2004 observations recorded by the Assistant Commissioner in above paras 8.1 to 8.10 of the order in original reproduced earlier are only in

nature (of) observation (and) cannot be taken as denial of the credit…"

4.4 We find that the above referred decision of this Tribunal in the matter of the Appellant also covers the situation in the present appeals and in absence of any proceedings under Rule 14 of Cenvat Credit Rules, 2004 in these Appeals. Thus the observations made in the impugned order cannot be the reason for denial of the CENVAT Credit without proper proceedings in terms of Rule 14 of CENVAT Credit Rules, 2004.

4.5 We find that as the Appellant took re-credit of the amounts, therefore, at this point of time, the refund will not be granted. Also for the same reason the appellant claim to interest cannot be entertained as there was no proceeding for refund of credit suo-motto debited by the appellant for making claim of refund in terms of Rule 5 of the CENVAT Credit Rules, 2004 i.e. no refund proceedings were there in terms of Section 11B of Central Excise Act, 1944 so Section 11BB shall not be available.

5.1 Appeals are disposed of as indicated herein above.

(Pronounced in open court on-17 July, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

akp