IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos. 41277 & 41278 of 2015

(Arising out of Order in Appeal No. 68 & 69/2015 (STA - I) dated 30.3.2015 passed by the Commissioner of Service Tax (Appeals - I), Chennai)

M/s. Cargotec India Pvt. Ltd. Appellant
(formerly M/s. Navis India Technologies Pvt. Ltd.)
Ascendas International Tech Park Zenith
Phase III, 9th Floor, Unit - 4, CSIR Road
Taramani, Chennai - 600 113.

Vs.

Commissioner of GST & Central Excise Respondent

Chennai Outer Commissionerate Newry Towers, 12th Main Road Anna Nagar, Chennai - 600 040.

APPEARANCE:

CA A.K. Bharath Kumar for the Appellant Shri Harendra Singh Pal, Authorized Representative for the Respondent CORAM Hon'ble Shri M. Ajit Kumar, Member (Technical) FINAL ORDER NOS. 40549 & 40550/2025 Date of Hearing : 18.02.2025 Date of Decision: 29.05.2025 Per M. Ajit Kumar, These appeals are filed against Order in Appeal No. 68 & 69/2015 (STA - I) dated 30.3.2015 passed by the Commissioner of Service Tax (Appeals - I), Chennai.

2. Brief facts of the case are that the appellant is a 100% EOU under the Software Technology Park Scheme and are providing Information Technology Software Services and they are registered with the Service Tax Department. The appellant filed refund claims under Rule 5 of the CENVAT Credit Rules, 2004 being the unutilized CENVAT credit pertaining to the exports during the period April 2011 to June 2011 for Rs.4,82,708/- [OIO No 2/2012(R), Dt: 09.01.2012] and July 2011 to September 2011 for Rs.4,61,804/- [OIO No 3/2012 (R)]. After due process of law, the Ld. Original Authority, sanctioned refund of Rs.40,695/- and Rs.8,432/- for the above periods respectively and rejected the balance refund amount claimed on the ground that the services were done in unregistered premises and there was no nexus between input and output service. In appeal, the Ld. Commissioner (Appeals) upheld the order and rejected the refund claims. Hence the present appeals.

3. Shri N.K. Bharath Kumar, Ld. Chartered Accountant appeared for the appellant and Shri Harendra Singh Pal, Ld. Authorized Representative appeared for the respondent.

4. The submissions of both the parties have been considered and the material on record has been perused. The issues in dispute are examined below.

5. Unregistered Premises - Rs.775557/-

5.1 The appellant has stated that in the month of April 2011, the appellant shifted the location of operation from afore mentioned address at Adyar to a new premise based in Taramani. This relocation was done on account of the following reasons:

a. Need for a larger operational space which could not be fulfilled by the current facility.

b. Optimizing cost in the longer run by shifting to new premises c. Increased business opportunities on account of proximity to the IT belt.

ii) The appellant presently functions at the Ascendas International Tech Park, Zenith, Phase III, Unit No. 4,9th Floor, CSIR Road, Taramani, Chennai-600 113.

iii) The appellant is a 100% Export Oriented Unit registered under the Finance Act, 1994, under the category "Information Technology Software Services" vide registration No. AACCC8095QST001. The appellant had obtained registration on 16/03/2009. On relocation, the appellant had amended the service tax registration certificate on 05/01/2012 to incorporate the new registered premises at Taramani.

iv) In the case of Commissioner of Service Tax-III, Chennai Vs Customs, Excise & Service Tax Appellate Tribunal, Chennai & M/s. Scioinspire Consulting Services (India) Pvt Ltd, Chennai, reported in 2017 (4) TMI 943-MADRAS HIGH COURT, the Hon'ble Court Held that:

Refund of unutilized cenvat credit - export of services - unregistered premises - case of assessee is that in the absence of a statutory provision, prescribing that, registration of the premises was mandatory for availing input service tax credit, the Assessee could not be denied refund of unutilized cenvat credit on input services - Whether the decision of CESTAT i.e. Respondent No.1 in allowing refund of Cenvat credit even without registration is correct? - Held that: - Mere perusal of Rule 5 of the 2004 Rules, would, inter alia, show that where a service provider, provides an output service, which is exported, without payment of service tax, he would be entitled to refund of cenvat credit, as determined by the formula provided in the Rule-Rule 5 of the 2004 Rules does not stipulate registration of premises as a necessary prerequisite for claiming a refund -refund allowed appeal dismissed - decided against Revenue.

v) A similar view was held by the Hon'ble Karnataka High Court in mPortal India Wireless Solution (P) Ltd Vs Commissioner of Service Tax. - [2011] 16 taxmann.com 353 (Kar.) 5.2 I find that the order is very cryptic and rejects the claim on the ground

that, "service tax availed and claimed as refund from un

registered premises etc. which is not directly used for providing the output service as provided under Rule 2(1) and 3 of the Cenvat Credit Rules, 2004." It is not disputed that the appellant is a 100% Export Oriented Unit registered under the Finance Act, 1994, under the category "Information Technology Software Services" vide registration No. AACCC8095QST001. He hence satisfies the provisions of registration. There is no mention in the said Rules that service tax can be availed only in a registered unit. Moreover, in the circumstances cited by the appellant he could have been facilitated by examining the actual input/ output details of CENVAT Credit from the records maintained by the appellant. There is no allegation that the appellant was asked for data which he refused to provide. Hence this finding in the impugned order must be set aside with consequential relief.

6. Nexus Between Input and Output services - Rs.119828/- 6.1 The appellant has stated that;

i) Circular No. 120/01/2010-ST dated 19-01-2010 clearly provides in Para 3.2.1 as under:

> 3.2.1 Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme [Notification No. 41/2007-ST dated 06.10.2007] which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009-

ST] whereunder an exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under notification No. 5/2006-CE (NT). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect.

ii) In the case of M/S. INFOSYS LIMITED VERSUS COMMISSIONER OF SERVICE TAX, BANGALORE, reported in 2024 (6) TMI 845 CESTAT BANGALORE, the Honorable CESTAT inter alia held that:

> ".....Correlation between the inputs and output services - Board vide Circular dated 19.1.2019-HELD THAT:- The Board vide Circular dated 19.1.2019 suggested that in Budget 2009, the scheme was simplified by making a self-certification whereunder
> an Exporter or its Chartered Accountant is required to certify the invoices about correlation and the nexus between the inputs/input services and the exports. The Board had directed to be liberal and accept the correlation as certified by the Chartered Accountant as above even in cases of Rule 5 refund claims. The question of correlation arises only when the accumulation of input credit is on account of export

of services. In the instant case, since the services rendered by the appellant cannot be considered as export of services, the question of correlation becomes immaterial.

6.2 I find that the OIO's are very cryptic and do not discuss as to why the input services cannot be corelated to the output. As stated by Hon'ble Justice Krishna Iyer in Organo Chemical Industries & Anr vs UOI [1979 AIR 1803 / 1980 SCR (1) 61], 'The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.' Hence the order merits being set aside on this ground alone. The Commissioner (Appeals) has tried to improve upon the order of the Original Authority by discussing the law without examining the facts of use/ non-use of each input service with the output. Further, I find that the judgment and Circular cited by the appellant also cover the issue in their favour.

7. In the light of the discussions above, I set aside the impugned orders and allow the appeals. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open Court on 29.5.2025) (M. AJIT KUMAR) Member (Technical) Rex