

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20030 of 2020

[Arising out of Order-in-Appeal No. 234/2019 dated 03/09/2019 passed by Commissioner of Central Tax , BANGALORE-I (Appeals-I)]

**M/s Mercedes Benz Research And
Development India Pvt Ltd**

Whitefield Palms Plot No 9 & 10 EPIP Zone
Hoodi Village Phase 1 K R Puram Hobli
Whitefield
BANGALORE - 560066
KARNATAKA

Appellant(s)

VERSUS

**Commissioner Of Central Tax,
Bengaluru East**

BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE - 560071
KARNATAKA

Respondent(s)

APPEARANCE:

Shri Sarvan Kumar, Consultant for the Appellant
Shri P.Gopakumar, Authorized Representative for the Respondent

CORAM:

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

Final Order No. 20064 / 2021

Date of Hearing: 09/03/2021

Date of Decision: 09/03/2021

S.S GARG

The present appeal is directed against the impugned order dated 03.09.2019 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has rejected the refund claim of the appellant with regard to two input services, viz. Real Estate Agency Service and Works Contract Service on the ground of lack of nexus with the output services.

2. Briefly the facts of the present case are that the appellants are engaged in export of Information Technology Software Service. The appellant has filed a refund claim under Notification No.27/2012 dated 18th June, 2012 issued under Rule 5 of CENVAT Credit Rules, 2004 for the period April to June 2017 for an amount of Rs.21,62,10,528/- on 28.03.2018 before the Assistant Commissioner and thereafter Assistant Commissioner issued a SCN proposing to reject the same. The appellant filed detailed reply to the SCN and the learned Assistant Commissioner vide his Order dated 31.10.2018 sanctioned refund of Rs.20,88,79,249/- and rejected refund amounting to Rs.12,54,357/- on the ground of ineligible credit on Event Management Service, Real Estate Agency Service and Works Contract Service. Aggrieved by the said order, the appellant filed appeal before the Commissioner and the learned Commissioner rejected the refund of CENVAT credit claimed on Real Estate Agency Service and Works Contract Service. Hence the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellant submitted that the present appeal is confined to rejection of refund on Works Contract Service and Real Estate Agency Service amounting to Rs.5,78,234/-. He further submitted that the impugned order rejecting the refund claim is not sustainable in law as the same has been passed without properly appreciating the definition of Input Service and without considering the requirement of the business of the appellant. He further submitted that the refund claim has been rejected in relation to certain input services for the reason that input services do not bear any direct nexus with export of service and also excluded from definition of Input Service. He also submitted that the definition of Input Service has to be interpreted in the light of requirement of business and it cannot be read restrictively. He also submitted that as far as Real Estate Agency Service is concerned, such services help in identifying office premises from where software services are exported by the appellant and

without office premises software services cannot be rendered by the appellant and hence it is directly related to the primary business requirement. He also submitted that as far as Works Contract Service is concerned, these services, in fact, includes services towards repair and maintenance of office premises and the service falls under the Works Contract for repair of equipment and premises which is specifically included under the definition of Input Service and these services are very essential for the smooth operation of the company and to ensure work efficiency and hence Works Contract are essential for provision of output service.

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that both the authorities have taken a narrow interpretation of Input Service definition. In fact, as far as Real Estate Agency Service is concerned, the said service has been availed for identifying the office premises from where the software services can be exported by the appellant and without office premises, software services cannot be rendered hence the said service, in my view, is directly related to the primary business requirement of the appellant and it has a direct nexus with the Output Service exported by the appellant. Further, with regard to the Works Contract Service, I find that both the authorities have not appreciated the fact that the appellants have availed the services towards repair and maintenance of office premises which is essential for the provision of output services and further I find that modernization, renovation, repair and maintenance of office premises is specifically included in the definition of Input Service under Rule 2(l) of CENVAT Credit Rules, 2004. As far as Real Estate Agency Service is concerned, the appellant has relied upon the following decisions:

- *Indus Tubes Ltd. Vs CCE, Ghaziabad, 2007-TMI-1453-CESTAT, New Delhi.*
- *CST Vs Poonam Grover Associates, 2008-TMI-20573-CESTAT, Ahmedabad.*
- *Prem Steels Pvt. Ltd. Vs CCE, Meerut, 2009-TMI-32717-CESTAT, New Delhi.*

7. In view of my discussion and by following the ratio of the various case laws cited supra and the definition of Input Service as provided in CENVAT Credit Rules, 2004, I am of the considered view that denial of refund is not sustainable in law and I set aside the impugned order by allowing the appeal of the appellant.

(Order pronounced in the open court on 09/03/2021)

(S.S GARG)
JUDICIAL MEMBER

PK...