CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 141 of 2012

[Arising out of Order-in-Appeal No. 415/BL/GGN/2011 dated 30.09.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

M/s OSC Export Services Pvt. Ltd. **......Appellant**
3rd & 4th Floor, Vatika Towers, Block-B,
Sector-54, Gurgaon, Haryana-122002

VERSUS

Commissioner of Central Goods & Service Tax, Gurugram **......Respondent**
Plot No.36-37, Sector-32, Gurugram,
Haryana-122001

WITH

Service Tax Cross Application NO.56334 of 2014
In
Service Tax Appeal No. 60427 of 2013

[Arising out of Order-in-Appeal No. 503/SVS/GGN/2013 dated 11.09.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

Commissioner of Central Goods & Service Tax, Gurugram **......Appellant**
Plot No.36-37, Sector-32, Gurugram,
Haryana-122001

VERSUS

M/s OSC Export Services Pvt. Ltd. **......Respondent**
3rd & 4th Floor, Vatika Towers, Block-B,
Sector-54, Gurgaon, Haryana-122002

APPEARANCE:

Shri Deepak Thackur, Advocate for the Appellant

Shri Yashpal Singh, 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. 61786-61787/2025

DATE OF HEARING: 10.12.2025
DATE OF DECISION: 19.12.2025

P. ANJANI KUMAR:

The appellants, M/s OSC Export Services Pvt. Ltd., are engaged in the provision and exports of services such as Back Office Operations (including Finance and Accounting Services), Human Resources Services, Geographic Information System Services, Data Processing Services and Support Centre Services to their overseas group company i.e. M/s Clifford Chance Business Services Pvt. Ltd. The appellants filed a refund claim of Rs.73,71,769/-, under Rule 5 of CCR, 2004 read with Notification No.5/2006-CE (NT) dated 05.03.2006, for the period October 2008 to December 2008. A show cause notice dated 2nd July, 2010 was issued to the appellants proposing to deny the CENVAT credit on the grounds that credit was availed on Legal Consultancy Services which came to be taxable from 1st September 2009; payment for the services availed was made after the impugned period; credit was availed on services relating to Theme Party and Real Estate Services. Deputy Commissioner of Service Tax, New Delhi vide OIO dated 24.04.2011 sanctioned refund of Rs.49,14,850/- and rejected the balance claim of Rs.24,56,919/-. Being aggrieved by the order, the appellants preferred an appeal before Commissioner (Appeals) which came to be rejected vide OIA dated 30.09.2011. Hence, the appellants are before us vide Appeal No. E/141/2012. Revenue is in appeal vide Appeal No. E/60427/2013 against OIA dated 11.09.2013, which set aside OIO dated 26.08.2011 rejecting the refund claimed, on the grounds specified in the Grounds of Appeal. The appellants also filed cross-objection No. ST/56334/2014 against the same.

2. Shri Deepak Thackur, learned Counsel for the appellant, submits that major portion of the refund rejected pertains to Management or Business Consultant Service, which was wrongly claimed to be Legal Consultants Service by the Revenue; learned Commissioner (Appeals) has accepted the contention of the appellants for the subsequent period vide Order dated 11.09.2013. He submits that the Revenue's appeal cannot be maintained in view of the National Litigation Policy. Learned Counsel further submits that the activity performed by the appellant is not Legal Consultancy Services but Management or Business Consultant Service as held by this Bench in the appellant's own case i.e. Clifford Chance Business Services Pvt. Ltd. – Final Order No.60261/2020 dated 06.02.2020, for the quarters July-September 2008, April – June 2008 & July-September 2009. Learned Counsel submits that Knowledge Centre Services provided by the appellant is correctly classified as Management or Business Consultant Services; CBEC vide Circular F. No. 177/2/2001-CX4 dated 27.06.2001 clarified that services provided in relation to mergers and acquisitions are clearly covered under the scope of Management or Business Consultant Service.

3. Learned Counsel submits that the classification adopted by the appellants has not been challenged by the Revenue in assessment proceedings and therefore, it cannot be challenged while sanctioning refund which is executionary in nature as held in ITC Ltd. – 2019 (7) SCC 46 and B.T India Pvt. Ltd. – 2023 (119) GSTL 387. He further submits that it was held in Cognizant Technology Solutions – 2017 (59) GSTL 54 that when the facts were declared in ST-3 Returns, the eligibility or applicability of service for refund cannot be questioned at the time of refund. He also relies on Evonik Energy Services – 2016 (55) GSTL 811 (CESTAT Mumbai).

4. Learned Counsel submits that even if the Knowledge Centre Services were treated as Legal Consultant Services, refund cannot be denied as the tax was paid by the appellant and credit availed as held in mPortal India Wireless Solutions Pvt. Ltd. – 2012 (27) STR 134 (Kar.). He further submits that even if the Knowledge Centre Services were treated as Legal Consultant Services, only Rs.9,80,457/- is liable to be denied as against Rs.14,79,474/- as is being proposed.

5. Learned Counsel submits, as regards the denial of CENVAT credit of Rs.9,30,378/- on the account that payment was made after the impugned period that the payment has been made much before the filing of the refund claims and was indicated in the Returns for October 2008 to March 2009; therefore, as held in AD-2 Pro Global Creative Solutions Pvt. Ltd. – 2023 (5) TMI 1131- CESTAT Chennai, credit cannot be denied. He submits that the credit on Theme Party (Event Management Services) and Real Estate Services is admissible

as held in Vardhman Spinning and General Mills – 2017 (9) TMI 859 – CESTAT Chandigarh. He submits that CENVAT credit cannot be denied while deciding the applicability of refund as no proceedings were initiated under Rule 14 of CENVAT Credit Rules as held in M/s Sentini Technology Pvt. Ltd. – 2020 (11) TMI 240 – CESTAT Hyderabad. For all his arguments, learned Counsel relies on the following cases:

- Airbnb Payments India Pvt. Ltd. vs. Commissioner of Central Excise and Service Tax, 2024 (9) TMI 1172 CESTAT Chandigarh
- Blackrock Services India Pvt. Ltd. vs. Commr. of CGST, Gurgaon 2022 (1) CEN 138 (Tri.-Chan)
- M/s Fox Mandal & Co. vs. Commissioner, Customs, Central Excise and Service Tax, 2024 (6) TMI 306-CESTAT Allahabad
- Acceleya Kale Solutions Ltd. vs Commissioner of CGST, Thane, 2019 (369) E.L.T. 803 (Tri. - Mumbai)
- General Motors Technical Centre India Pvt. Ltd. vs. Commissioner of Central Tax, 2021 (4) TMI 894

6. As regards the Revenue's appeal No. E/60427/2013, learned Counsel for the appellants submits that the amount involved is Rs.8,99,742/- which is on account of the rejection of appellant's claim of credit of Management or Business Consultant Services which was wrongly interpreted by the Revenue as Legal Consultancy Services; in view of the discussion as above, the service is correctly classifiable under Management or Business Consultant Services; moreover, the amount is very much under the threshold prescribed under National Litigation Policy and as such, Revenue's appeal is liable to be dismissed.

7. Shri Yashpal Singh, learned Authorized Representative for the Department reiterates the findings of the impugned order as far as

the appellant’s appeal is concerned and Grounds of Appeal as far as Revenue’s appeal is concerned. He submits that the party themselves have claimed that even if they are required to reverse 8% on CENVAT credit availed on exempted services, maximum credit that can be denied was Rs.9,80,457.

8. Heard both sides and perused the records of the case. We find that in this case Revenue attempts to deny the CENVAT credit while deciding an application for refund and without challenging the assessment/ self-assessment order in this regard and without taking recourse of Rule 14 of CENVAT Credit Rules, 2004. We find that learned Counsel for the appellants could successfully demonstrate that it is not open for the Revenue to decide the classification of input service or to decide the eligibility of such input service at the time of sanctioning the refund. We find that the cases relied upon by the appellants are squarely applicable to the facts of the case. Moreover, we find that the nature of the service rendered by the appellants is Management or Business Consultant Services rather than Legal Consultancy Services. We also find that there is no merit in the argument of the Revenue that the refund of Rs.9,30,378/- is not admissible to the appellants as the payment was at a later date. We find that this issue stands settled in the case of AD-2 Pro Global Creative Solutions Pvt. Ltd (supra). We also find that Hon’ble Supreme Court held in the case of ITC Ltd. (supra), which was followed by Hon’ble Delhi High Court in the case of B.T. India Pvt. Ltd. (supra), that refund proceedings are executionary in nature and

therefore, are not independent of assessment proceedings that is to say that unless the assessment is challenged and modified by competent authority, refund cannot be rejected by Revenue.

9. Coming to the argument of the learned Counsel on the appellant’s admission before the Adjudicating Authority that the maximum amount that can be disallowed by the Department, in respect of reversal of 8% on turnover of non-taxable services, is Rs.9,80,457/-. We find that the situation is revenue neutral as even if the refund is rejected to that extent, the amount requires to be credited to the CENVAT account of the appellants. Moreover, in view of the submission of the learned Counsel that as no show cause notice has been issued under Rule 14 of CCR, 2004, the issue of inadmissible credit cannot be decided at the time of sanctioning of refund.

10. Coming to the Revenue’s appeal on the ground that the service rendered by the appellants is Legal Consultancy Service and not Management or Business Consultant Service, we find that the issue is settled in favour of the appellants as per our discussion above and the ration of the cases relied upon by the appellant. Moreover, we find that the amount is well below the threshold monetary limit prescribed under National Litigation Policy as per CBIC Circular dated 06.08.2024. Therefore, we do not find any merit in the Revenue’s appeal.

11. Accordingly, the appeal No. E/141/2012 filed by M/s OSC Exports Services Pvt. Ltd. is allowed and the appeal No. ST/60427/2013 filed by the Revenue is rejected. Cross-objection No. ST/56334/2014 is accordingly disposed of.

(Order pronounced in the open court on 19/12/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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