CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Service Tax Appeal No. 86917 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-064-16-17 dated 11.05.2016 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 87059 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-87-16-17 dated 30.05.2016 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 87574 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-215-216-16-17 dated 06.09.2016 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 87575 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-215-216-16-17 dated 06.09.2016 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 85170 of 2017

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-285-16-17 dated 01.12.2016 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 86599 of 2017

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-02-17-18 dated 06.04.2017 passed by the Commissioner of Service Tax (Appeals), Pune)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of Service Tax-I, Pune **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 85183 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-226-17-18 dated 05.10.2017 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 85194 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-223-17-18 dated 05.10.2017 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 86490 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-341-17-18 dated 24.01.2018 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 87558 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-383-17-18 dated 22.03.2018 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 88383 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-038-18-19 dated 16.05.2018 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

AND

Service Tax Appeal No. 85149 of 2019

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-137-18-19 dated 01.11.2018 passed by the Commissioner of Central Tax (Appeals), Pune-II)

Tech Mahindra Ltd. **Appellant**
Sharda Center, Off Karve Road,
Erandwane, Pune 411 004.

Vs.

Commissioner of CE & ST, Pune-II **Respondent**
ICE House, 41/A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Jay Chheda with Shri Aniket Barve, Advocates, for the Appellant
Ms. S. Varalakshmi, Additional Commissioner, Authorised Representative for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 09.12.2024
Date of Decision: 21.03.2025

FINAL ORDER NO. 85445-85456/2025

PER: ANIL G. SHAKKARWAR

Above stated 12 appeals are taken together for decision since they are filed by the same appellant and having common issues. There are two issues involved in this set of appeals. On the basis of issues, they are divided in two batches. Appeal Nos. ST/86917, 87059/2016, ST/85170/2017, ST/85194, 86490, 87558/2018 shall be called hereinafter as Batch-I appeals which have a common issue involved which is related to refund of accumulated cenvat credit under the provisions of Rule 5 of Cenvat Credit Rules, 2004. Remaining appeals shall hereinafter be referred to as Batch-II appeals and are having an issue related to refund of service tax under Section 11B of Central Excise Act, 1944 made applicable to service tax matters through Section 83 of Finance Act, 1994.

2. Brief facts of the case are as follows:-

Appellant provides information technology software services to its clients located outside India. Appellant provides the said services under two modules which shall be hereinafter referred to as Model-I and Model-II. The transactions that are under Model-I are not under dispute in the present appeals and, therefore, details of the same are not required because in the case of Model-I, appellant directly enters into contracts with overseas customers for providing information technology software service (ITSS). Appellant raises invoice on overseas customers for entire service rendered and the said transactions are not in dispute in the present appeal. Model-II covers only approximately 2% of the total transactions that take place between the appellant and their overseas customers. In Model-II outside India subsidiaries are involved. In this model the customers enter into contract with subsidiary of the appellant located outside India and then the entire contract is assigned to the appellant in India. Appellant assigns the onsite components of the said contract to overseas subsidiaries. Overseas subsidiary raises an invoice for entire contract value on overseas customer. Appellant raises an invoice for entire contract value on overseas subsidiary. Overseas subsidiary raises another invoice on the appellant and recovers the cost plus markup of onsite services provided by subsidiary to overseas customer. Appellant discharges service tax under reverse charge on the invoice value for invoices which are raised by overseas subsidiary on the appellant. In Model-II transactions, onsite service is provided by subsidiary out of India. The subsidiary is out of India, the client is out of India and the service is also provided out of India. Service tax paid under reverse charge on the value of invoice raised by the subsidiary on the appellant for doing onsite work in respect of overseas customers for which an invoice is raised to recover cost plus markup is availed by the appellant as cenvat credit. The said cenvat credit is sought to be refunded by the appellant under Rule 5 of Cenvat Credit Rules, 2004 through Batch-I appeals for the period from October 2014 to June 2017. Due to ongoing dispute with Revenue as to whether such cenvat credit is admissible to the appellant or not under the provisions of Rule 2(l) of Cenvat Credit Rules, 2004, alternatively the appellant started filing claim for refund of entire service tax paid by it for the period from April 2015 to June 2017. The said refund applications involve the entire service tax which involved service tax paid both in Model-I and Model-II transaction. In six appeals put together in Batch-I appeals, the refund of cenvat credit which was claimed by the appellant was Rs.75,26,04,317/-. In Batch-II appeals the entire refund claimed by the appellant in all the refund claims for the period from April 2015 to June 2017 which is the subject matter of six appeals in Batch-II appeals, is Rs.2068,05,21,894/-. Out of them, refund of service tax paid on services covered by Model-II transactions is Rs.75,26,04,317/-. In respect of Batch-I appeals, the original authority and the first appellate authority have held that service tax paid under reverse charge on services provided by subsidiaries to clients outside India will not qualify as input services for the appellant in India and, therefore, the refund of cenvat credit of Rs.75,26,04,317/- in six orders-in-appeal related to six appeals in Batch-I was denied to the appellant. Aggrieved by the said order, appellant is before this Tribunal in Batch-I appeals. In respect of Batch-II appeals, the original authority in all the six cases has rejected the refund applications. Learned Commissioner (Appeals) has affirmed the said orders by assigning various reasons like the application is premature or if such application is allowed, it will create legal implications. Aggrieved by the said orders, appellant is before this Tribunal in Batch-II appeals.

3. Hearing of these appeals took place on various dates and on various dates, part of the arguments were made by both sides. Therefore, both sides were allowed to make consolidated written submissions on the basis of their arguments made in the court during hearing on various dates.

4. Learned counsel for the appellant has submitted a consolidated written submission on 09.07.2024 received in the Registry on 10.07.2024 on the basis of arguments made by the counsel during hearings on various dates. The submissions of learned counsel for the appellant are as follows:-

A. In respect of Batch-I appeals, the following submissions were made:-

a. Service tax is a contract based levy and leviable on each contract of service and the supply under each contract is distinct provision of service.

b. The onsite services provided by the appellant through overseas subsidiaries under Model-II qualify as export of service.

c. The entire contract value should be taken into account for calculating the export turnover to determine the refund claim as per Rule 5 of Cenvat Credit Rules, 2004.

d. The onsite services provided by the appellant under Model-II is a part of the composite contract of software development and hence these cannot be treated in isolation as independent services.

e. The onsite services provided by the overseas subsidiaries to the appellant for the Model-II transactions would amount to input service for the appellant. Therefore, the appellant has rightly availed the cenvat credit on the tax paid on such services.

f. Cenvat credit cannot be held to be inadmissible in a refund proceeding in absence of any notice under Rule 14 of Cenvat Credit Rules, 2004 and, therefore, the order-in-original concluded that cenvat credit of Rs.75,26,04,317/- is not available to the assesse is without jurisdiction.

g. Cenvat credit availed on tax paid under reverse charge basis cannot be reversed even where such tax was not required to be discharged by the appellant.

h. Cash refund should be granted to the appellant under Section 142(3) of CGST Act, 2017.

B. Submissions on Batch-II appeals: Learned counsel for the appellant has made following submissions in respect of Batch-II appeals:-

a. Without prejudice to the grounds taken in respect of Batch-I appeals, refund is admissible under the provisions of Section 11B of Central Excise Act, 1944 in respect of appeals under Batch-II appeals.

b. In response to the contentions raised by Revenue that Hon’ble Supreme Court in the case of ITC Ltd. vs. Commissioner of Central Excise, Kolkata reported at 2019 (368) ELT 216 (SC) contended that refund claim filed by the appellant under Section 11B cannot survive, learned counsel has submitted that the Larger Bench in the case of Shree Balaji Warehouse vs. Commissioner of Central Excise & Service Tax, Panchkula reported at 2023 (9) TMI 1478 – CESTAT Chandigarh (LB) held that the decision in ITC Ltd. (supra) is not applicable to service tax matter since service tax return is not assessed by the proper officer unlike the Bill of Entry under the Customs Act, 1962.

c. Dealing with the argument of Revenue that the Tribunal's final order No. A/85255-85262/2022 dated 04.03.2022 has decided that the Model-II onsite turnover does not qualify as export of services, learned counsel for the appellant has submitted that there is no discussion or finding about the denial of cenvat credit of tax paid on reverse charge.

d. The calculation sheet submitted by Revenue has no bearing on the relief claimed by the appellant in the present appeals since the effect of transfer of cenvat credit to refund receivable general ledger is not considered by the department in the said computation.

Along with the said consolidated written submission dated 09.07.2024 appellant has filed original copy of affidavit dated 26.06.2024 filed by Ms. Heena Shah, AVP – Taxation of the appellant company. For the sake of ready reference, the entire affidavit is reproduced below:-

"<u>BEFORE THE HON'BLE CUSTOMS, EXCISE, SERVICE TAX APPELLATE TRIBUNAL, MUMBAI</u>

In the matter of:

Tech Mahindra Limited

In the matter of:

ST/86917/2016, ST/87059/2016, ST/85170/2017, ST/85194/2018, ST/86490/2018, ST/87558/2018

[Appeals pertaining to denial of CENVAT credit of Model II onsite services – (<u>Batch-I Appeals)] &</u>

ST/85699/2016, ST/87575/2016, ST/87574/2016, ST/86599/2017, ST/85183/2018, ST/85149/2019, ST/88383/2018

[Appeals pertaining to denial of refund claim under section 11B of Central Excise Act 1944 read with Section 83 of Finance Act 1994 (<u>Batch-II Appeals)</u>].

<u>AFFIDAVIT</u>

1, Heena Shah, daughter of K J Kothari, Indian Inhabitant, aged 53 years, residing at Pune do hereby state and affirm as under:

1. I am AVP-Taxation at Tech Mahindra Ltd (Appellant) having office at Sharda Centre Pune.

2. The present affidavit is in relation to the litigation pending before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT) in the above-mentioned appeals.

3. I have perused the appeals filed by the Appellant and based on that I swear as below:

4. The Appellant has filed the Appeals in 2 batches- Batch-1 and Batch-II as mentioned above. The details of Batch-II appeals along with the corresponding reference to Batch-1 appeals are tabulated below:

<table>
<tr><th colspan="5">Batch-II Appeals</th><th colspan="2">Corresponding Batch-I Appeals</th></tr>
<tr><th>Sr. No.</th><th>CESTAT Appeal No.</th><th>Period</th><th>Order-in-Appeal No.</th><th>Amount (RS)</th><th>CESTAT Appeal No.</th><th>Amount (Rs)</th></tr>
<tr><td>1</td><td>ST/87575/2016</td><td>Apr-14 to Mar-15</td><td>PUN-SVTAX-000-APP-215-216-16-17</td><td>542,85,44,331</td><td>ST/86917/2016</td><td>6,47,01,852</td></tr>
<tr><td>2</td><td>ST/87574/2016</td><td>Mar-15 to Jun-15</td><td>PUN-SVTAX-000-APP-215-216-16-17</td><td>136,82,93,311</td><td rowspan="2">ST/87059/2016</td><td rowspan="2">10,08,12,172</td></tr>
<tr><td>3</td><td>ST/87574/2016</td><td>Jul-15 to Sep-15</td><td>PUN-SVTAX-000-APP-215-216-16-17</td><td>130,76,74,227</td></tr>
<tr><td>4</td><td>86599/2017</td><td>Oct-15 to Mar-16</td><td>PUN-SVTAX-000-APP-02-216-17-18</td><td>354,74,52,739</td><td>ST/85170/2017</td><td>17,84,94,695</td></tr>
<tr><td>5</td><td>ST/85183/2018</td><td>Apr-16 to Sep-16</td><td>PUN-CT-APPII-000-226-17-18</td><td>333,01,30,759</td><td>ST/85194/2018</td><td>15,22,18,357</td></tr>
<tr><td colspan="4">Sub-total (A)</td><td>1498,20,95,367</td><td></td><td>49,62,27,076</td></tr>
</table>

6	*ST/85194/ 2019*	*Oct 16 to Mar-17*	*PUN-CT-APPII-000-137-18-19*	*398,09,73,699*	*ST/86490/ 2018*	*17,18,91,071*
7	*ST/88383/ 2018*	*Apr-17 to Jun 17 PUN-CT-APPII-000-038-18-19*		*171,74,52,828*	*ST/87558/ 2018*	*8,44,86,170*
Sub-total (B)				***569,84,26,527***		***25,63,77,241***
Total (A+B)				***2068,05,21,894***		***75,26,04,317***

5. Out of the total amount of disputed Cenvat Credit of Rs 75,26,04,317/- denied in the Batch 1 Appeals, the Appellant reversed the Cenvat credit to the extent of Rs 49,62,27,076/- (from October 2014 to September 2016) and transferred in a distinct ledger named 'Refund Receivable General GL-10300024 (Old Software GL-140910)' in its books of accounts. The said amount was not re-availed as Cenvat credit and not transitioned into GST regime.

6. The balance amount of Rs. 25,63,77,241/- for the period October 2016 to June 2017 has not been reversed/debited from Cenvat credit ledger and transferred to the ledger 'Refund Receivable General GL-10300024 (Old Software GL-140910)'.

7. Therefore, in the Batch I appeals, out of the total amount of disputed Cenvat Credit of Rs 75,26,04,317/, a cash refund to the extent of Rs 49,62,27,076/- only should be granted to the Appellant.

8.1. In Batch-II Appeals, the Appellant filed refund claim under Section 11B of Central Excise Act, 1994 on protective basis of the entire tax paid under reverse charge (i.e. under Model I and Model II transaction both) on the onsite services provided by the overseas branches and subsidiaries. The said protective refund claim under section 11B amounted to Rs 2068,05,21,894/-. However, the Appellant is not pressing for cash refund of the entire protective claim of Rs 2068,05,21,894/- since the Appellant has received a substantial amount of refund under Rule 5 of Cenvat Credit Rules, 2004 or the Cenvat credit has been transitioned to the GST regime by the Appellant. The protective refund claims in Batch II appeals would be pressed only to the extent of Rs.75,26,04,317/- if it is held that Model-II onsite services is ineligible as Cenvat credit. The refund claim under Section 11B of Central Excise Act, 1994 for the balance of Rs.

1992,79,17,577/- [2068,05,21,894 less 75,26,04,317] is unconditionally withdrawn by the Appellant.

8.2. Out of the said claim of Rs 75,26,04,317/-, the Appellant is pressing for a cash refund under section 11B read with section 142(3) of CGST Act of Rs. 49,62,27,076/- which is lying in 'Refund Receivable General GL-10300024 (Old Software GL-140910). The balance amount of Rs. 25,63,77,241/- should be treated as refund of the tax in the form of credit which is eligible in terms of Section 11B of Central Excise Act, 1994.

9. The Appellant hereby withdraws the Batch II appeals to the extent of Rs. 1992,79,17,577/-[2068,05,21,894 less 75,26,04,317].

Thus, I hereby state and affirm that the contents of the Affidavit filed before Your Honour are and correct to the best of my knowledge and belief.

VERIFICATION

I, Heena Shah, the Deponent above named, do hereby verify that the contents of foregoing affidavit are true to my knowledge, derived from the records of the case and the submissions made therein are on advice received and believed by me to be correct, no part of it is false and nothing material has been concealed therefrom.

Verified at Pune on the 26th day of June, 2024.

DEPONENT"

5. Similarly Revenue has filed written submissions on various dates and submitted as follows.

A. In respect of Batch-I appeals, Revenue has made following submissions:-

a. Under Model-II, service cannot be treated as service exported for the purpose of calculating refund.

b. Batch-I appeals are squarely covered by the final order bearing final order No. A/85255-85262/2022 dated 04.03.2022 of the Tribunal for the past period from July 2012 to March 2014, wherein it was categorically held that onsite component of Model-II service cannot be treated as export of service. It was held by this Tribunal that the appellant's claim that the component of onsite service actually provided by the subsidiary to the overseas client directly under a valid contract between those two legal entities. An input service imported by the appellant is a hollow claim when examined in the light of factual position and that the onsite services were not provided by the appellant to the foreign customers. Therefore, the appeals under Batch-I appeals deserve to be dismissed.

c. The onsite service under Model-II cannot be treated as service of export for the purpose of calculating refund under Rule 5 of Cenvat Credit Rules, 2004 where a formula for calculation of admissible refund is provided. The formula is as follows:-

"Refund amount = (export turnover of goods + export turnover of services) x CENVAT credit".

They have further submitted that onsite services under Model-II cannot be treated as export of service for the purpose of calculation of refund under the above stated formula and, therefore, the claims under Batch-I appeals are not in accordance with law.

A. In respect of Batch-II appeals they have made following submissions:-

a. In respect of Batch-II appeals, Revenue has submitted that cenvat credit has already been debited by filing refund applications under Batch-I appeals and hence if the refund is allowed, it will be double benefit to the appellant.

6. We have carefully gone through the record of the case, oral and written submissions as well as the affidavit dated 26.06.2024 filed by the Vice President of the appellant company. We note that the appellant is engaged in providing information technology software service mainly to its clients located outside India. Appellant is having its own subsidiaries in various countries. In about 98% cases, appellant is directly entering into contract with overseas customers for providing the above stated service. In those cases both export and onsite component of service is provided by the appellant with the help of its overseas subsidiaries and invoice is raised by the appellant from India and there is no dispute in respect of services rendered by the appellant directly to the overseas customers. For the sake of convenience for the present set of appeals, these transactions are called as Model-I transactions. In case of remaining 2% cases, for the sake of convenience for deciding the present appeals, such transactions are called as Model-II transactions wherein the subsidiary of the appellant enters into a

direct contract with overseas service recipients and provides service outside the territorial jurisdiction of India to their overseas customers and raises invoice from the subsidiary and collects the consideration for providing the service. As a transaction between the appellant company and subsidiary company or the appellant who is a holding company, invoices are raised between the two and money is transferred to the holding company irrespective of the value of service provided by subsidiary outside the territorial jurisdiction of India to overseas clients. The services provided by overseas subsidiary to their overseas clients are treated by the appellant as having provided by them on the strength of invoices which are for financial transactions between the holding company and subsidiary company where the appellant has no role in providing services by their subsidiary to their clients. Appellant has paid service tax on these transactions on reverse charge basis and availed cenvat credit of the same. Contention of Revenue is that those services are provided by subsidiaries and the appellant has nothing to do with them and, therefore, they are not input services for the appellant and, therefore, cenvat credit of service tax paid on the transactions that took place between overseas subsidiaries and their overseas clients does not satisfy the definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004, thereby holding that the authorities below have denied refund of accumulated cenvat credit of such cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. Through six orders-in-appeal dated 11.05.2016, 30.05.2016, 01.12.2016, 05.10.2017, 24.01.2018 and 24.01.2018, learned Commissioner (Appeals) has denied refund of cenvat credit to the appellant to the tune of Rs.75,26,04,317/-. The said cenvat credit is cenvat credit of service tax paid on transactions that completely took place beyond the territorial jurisdiction of India and under the provisions of Section 64 of Finance Act, 1994, service tax was not leviable on the same. Therefore, we do not find any infirmity in denial of refund of the said cenvat credit through the above stated orders-in-appeal. We, therefore, affirm the above stated six orders-in-appeal and dismiss appeal Nos. ST/86917, 87059/2016, ST/85170/2017, ST/85194, 86490, 87558/2018.

7. In respect of the other six appeals which have been described as Batch-II appeals in the foregoing paragraphs and the same are related to refund claims filed by the appellant for the period from April 2014 to June 2017, the same were dealt with by learned Commissioner (Appeals) in six orders-in-appeal and the same are subject matter of six Batch-II appeals stated above. From the record we find that the said appeals are in respect of entire service tax paid by the appellant during the relevant period and that included some component of the service tax paid on the transactions that took place between the overseas subsidiaries and their overseas clients which is already held to be not admissible for payment of service tax. From the case record and from the affidavit we note that in the said claims, total amount of refund claimed was Rs.2068,05,21,894/- i.e. around Rs.2068 crores. Appellant through the affidavit dated 26.06.2024 has withdrawn their claim for refund to the extent of Rs.1992,79,17,577/- out of the above stated amount of around Rs.2068 crores. Therefore, the claim left for decision in six appeals put together is Rs.75,26,04,317/-. Appellant has in the said affidavit submitted that they had received substantial amount of refund under Rule 5 of Cenvat Credit Rules, 2004 and, therefore, they were withdrawing their claim of refund to the tune of Rs.1992,79,17,577/-. Through the said affidavit, appellant has further submitted that they were pressing for refund of Rs.49,62,27,076/- out of Rs.75,26,04,317/- and also stated that Rs.25,63,77,247/- for the period from October 2016 to June 2017 has not been reversed/debited from cenvat credit ledger. The said claim for refund is in respect of service tax paid by the appellant in respect of transactions that took place beyond the territorial jurisdiction of India and, therefore, that service tax was not payable. We also note that out of the six refund applications, appellant is seeking refund of total amount of Rs.49.62 crores. We note that the refund claim in appeal No. ST/87575/2016 is Rs.542.85 crores. The same in appeal No. ST/87574/2016 is Rs.136.82 crores. Similarly the other refund claims in respect of other appeals are Rs.130.76 crores, Rs.354.74 crores, Rs.333.01 crores, Rs.398.09 crores and Rs.171.74 crores. We note that out of, for example, Rs.542.85

crores which component which is part of Rs.1992.79 crores and out of Rs.398.09 crores, which part of Rs.1992.79 crores and Rs.25.63 crores is to be debited or deducted to arrive at admissible refund out of Rs.542.85 crores or Rs.398.09 crores is not available in the case record. The affidavit has not given such bifurcation in respect of refund claim dealt with in each appeal. Therefore, even if we allow the appeals in Batch-II appeals, the refund sanctioning authorities will not be in a position to decide the quantum of refund to be allowed to the appellant in each individual refund claim dealt with in each appeal of Batch-II appeals. Therefore, such an order will be unimplementable order and an unimplementable order is not sustainable in law and, therefore, for want of sufficient information, we are not able to pass orders for allowing refund in case of Batch-II appeals. We, therefore, hold that in the absence of complete information required to pass orders, we are not able to allow appeals in Batch-II appeals. Therefore, we reject appeals bearing Nos. ST/87574, 87575/2016, ST/86599/2017, ST/85183/2018, ST/85149/2019 and ST/88383/2018 for want of adequate information.

8. In above terms, all the 12 appeals are either dismissed or rejected as stated above.

(Order pronounced in the open court on 21.03.2025)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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