

2013 (1) ECS (137) (Tri-Mum)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI

Court No.

**M/s BNY Mellon International Operation (India) Pvt. Ltd.**

**Vs.**

**Commissioner of Central Excise (Appeals), Pune-III**

**Appeal No. ST/602, 603, 604/2012-Mum.**

[Arising out of Order-in-Appeal No. P/III/RS/176, 177 & 178 / 2012 dated 25/5/2012 passed by the Commissioner (Appeals) Central Excise, Pune]

M/s BNY Mellon International Operation (India) Pvt. Ltd.                      Appellant

Vs.

CCE (Appeals), Pune-III    Respondent

Appearance:

Shri Ravikumar Yanamandra C.A. for Appellant  
Shri V.R. Kulkarni, Deputy Commissioner (AR) for the respondent

**CORAM**

**Mr. Sahab Singh, Member (Technical)**

Date of Hearing: 2.11.2012

Date of decision:2.11.2012

ORDER NO A/350-352/2012/SMB/C-IV

**“I find that the Hon’ble High Court of Karnataka has examined admissibility of refund under Rule 5 of the Cenvat Credit Rules, 2004 in case of shell India Markets**

**Pvt. Ltd. vs. CCE, Bangalore – 2012 (278) E.L.T 50 (Kar.) and the Hon'ble High Court in para 7 of its judgment has held as under:-**

**“It is necessary to verify not only that particular input service is consumed for providing particular output service but also that eligible service received under various invoices have actually gone into consumption for providing impugned exported output service and not utilized for other purpose.”**  
[Para 6]

**Per: Sahab Singh**

1. These are three appeals filed by M/s BNY Mellon International Operations (India) Pvt. Ltd. (hereinafter referred to as appellants) against the Order-in-Appeal No..P III/RS/176, 177 & 178/2012 dated 25.5.2012.
2. The brief facts of the case are that appellants are engaged in the case of export of services, in the nature of Business Auxiliary Services. The appellants exported the taxable output services under Rule 3 of the Exports of Service Rules 2005 which has resulted in accumulation of un-utilized credit of service tax availed on input services. Therefore the appellants filed three separate refund claims of Rs. 37,31,850/-, Rs. 30,72,784/-and Rs. 29,35,697/- for the month of October, November, December 2010 respectively. The adjudicating authority has allowed the admissible amount and rejected the partial amounts of Rs. 1,01,903/-, Rs 26,318/- and Rs. 4,60,501/- in respect of the above mentioned period. The appellant filed appeals before the Commissioner (Appeals), who has rejected the appeals of the assessee and the appellants are in the Tribunal against the impugned order.
3. The learned Advocate appearing for the appellant submitted that there is no dispute with regard to eligibility of the input services in respect of which the refund has been denied by the department. He submitted that adjudicating authority has rejected their refund claim on the ground that these input services have been received by the appellants after the period of export of services. he further submitted that the adjudicating authority has also rejected the refund claim in respect of input services comprising of distribution of Sodexo Meal Passes as the same are in the nature of welfare measure to the employee of the appellants. He submitted that since these services are used in output services of final products the credit of the tax paid on these services is liable to be refunded to them under Rule 5 of the Cenvat Credit Rules.
4. The learned Deputy Commissioner (A.R) appearing for the Revenue reiterated the findings of the lower authorities.

5. After hearing both sides I find that since the issues involved in all the three appeals is identical I take up all the appeals together.
6. I find that the refund has been denied to the appellant on the ground that refund of Cenvat credit had been claimed in respect of input services received by the appellant after the period of export and hence cannot be considered as input services used for the purpose of exported service during the period in question. This is a fact on record that these input services were received after the period of export and this fact is not challenged by the appellants. I find that the Hon'ble High Court of Karnataka has examined admissibility of refund under Rule 5 of the Cenvat Credit Rules, 2004 in case of Shell India Markets Pvt. Ltd. vs. CCE, Bangalore – 2012 (278) E.L.T 50 (Kar.) and the Hon'ble High Court in para 7 of its judgment has held as under:-

“It is necessary to verify not only that particular input service is consumed for providing particular output service but also that eligible service received under various invoices have actually gone into consumption for providing impugned exported output service and not utilized for other purpose.”

In view of the above decision of the Karnataka High Court, I find that their refund has rightly been rejected by the lower authorities.

7. In respect of two appeals the refund of Cenvat credit in respect of input services pertaining to Meal Vouchers has been denied on the ground that these activities were undertaken by the appellant for welfare of the employees and such activities are not the activities used for providing output service. I find that the Cenvat Credit of service tax paid on the outdoor canteen service is available to the appellant if the employees have not borne the service tax amount and the appellant has not charged the employee for providing the service as held by the Hon'ble Bombay High Court in the case of Ultratech Cement Ltd. reported in 2010 (260) ELT 369 (Bom.). Since the appellants are entitled for Cenvat credit of service tax on these services, they will also be eligible for refund of the same under Rule 5 if the services pertain to the period of refund in question. Therefore, the appellant will be entitled for refund of the Cenvat Credit pertaining to these services if the said service was utilized in the period in question and the appellants have not charged their employees for providing these services.

8. In view of the above, Appeal No. E/603/12 and E/604/12 are partly allowed and partly rejected and Appeal no. E/602/12 is rejected.

(Pronounced in court)