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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 13 OF 2025

WITH

CENTRAL EXCISE APPEAL NO. 29 OF 2025

WITH

CENTRAL EXCISE APPEAL NO. 26 OF 2025

WITH

CENTRAL EXCISE APPEAL NO. 33 OF 2025

WITH

CENTRAL EXCISE APPEAL NO. 30 OF 2025

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CENTRAL EXCISE APPEAL NO. 14 OF 2025

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CENTRAL EXCISE APPEAL NO. 14 OF 2025

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CENTRAL EXCISE APPEAL NO. 19 OF 2025

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CENTRAL EXCISE APPEAL NO. 20 OF 2025

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CENTRAL EXCISE APPEAL NO. 22 OF 2025

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CENTRAL EXCISE APPEAL NO. 36 OF 2025

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CENTRAL EXCISE APPEAL NO. 21 OF 2025

Commissioner of CGST Mumbai West

.. Petitioner

Versus

J P Morgan Services India Pvt Ltd.

.. Respondent

**Adv. Jitendra B. Mishra a/w Adv. Satyapraksh Sharma, Adv. Rupesh Dubey, Adv. Vaishali Malekar for the Appellant.
Mr. Darius Shroff, Senior Advocate a/w Adv. Sushanth Murthy, for Respondents.**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JANUARY 27, 2026**

P. C.

1. All these 26 Appeals filed by the Revenue raise a common issue relating to the admissibility of refund of unutilised Input Tax Credit (ITC) in respect of services that have been exported by the Respondent. As the adjudicating authority and the Commissioner of Central Excise & Service Tax (Appeals) passed separate orders in respect of separate periods, and as the Commissioner (Appeals) allowed some refund claims and rejected others, both the Appellant and the Respondent had filed separate appeals before the CESTAT. By a common order, the CESTAT allowed the appeals filed by the Respondent and rejected the appeals filed by the Appellant. Hence the present appeals.

2. During the disputed period of April 2008 to March 2014 the Respondent rendered various types of back-office services to group companies located both within and outside India. In respect of the output-

services provided outside India, the same are admittedly treated as export of services in terms of the Export of Service Rules, 2005 read with Rule 6A of the Service Tax Rules, 1994 and are not liable to service tax. As the output-services were exported without payment of tax, the Respondent was not in a position to utilise the input tax credit that had accumulated.

3. However, Rule 5 of the Export of Service Rules, 2005 provided for refund of such accumulated input tax credit. The said Rule provides that a manufacturer who clears the final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the formula set out therein, subject to procedure, safeguards, conditions and limitations as may be specified by the Board by Notification in the Official Gazette.

4. The Respondent accordingly filed refund claims for each quarter during the aforesaid disputed period claiming a refund of the accumulated input tax credit paid on “input services.” “Input service” has been defined in Rule 2 (l) (i) of the Cenvat Credit Rules, 2004 to mean “any service used by a provider of output service for providing an output service” and includes

services used in relation to modernisation, renovation or repairs of the factory premises of the provider of output services or an office relating to such factory premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, transportation of inputs or capital goods and outward transportation upto the place of removal but excluded certain services. It is no one's case that the services provided by the Respondent fall within the exclusion category.

5. The refund applications for different periods filed by the Respondent were adjudicated by the Jurisdictional Service Tax Authorities who allowed the benefit in respect of some input services but denied refund in respect of other services. On appeal against the adjudication orders, the Commissioner (Appeals) passed three orders, each order being for a different period. In the 1st order dated 28th March 2013, which was in respect of the period April 2008 to March 2009, the Commissioner (Appeals) allowed the appeals filed by the Respondent holding that Rule 5 had been amended by substituting the words “used for” in place of the words “used in” with retrospective effect from 14th March 2016 and held that there was therefore

no legal glitch in allowing the refund of the unutilised input tax credit. However, by the 2nd order dated 28th May 2014, for the period April 2009 to June 2009, and October 2010 to September 2011, the Commissioner (Appeals) rejected the appeals filed by the Respondent. By the 3rd order dated 30th March 2017, for the period October 2011 to December 2011, January 2012 to December 2012 and January 2013 to March 2014 the Commissioner (Appeals) allowed the refund claim for certain services and disallowed the refund claim for other services.

6. Aggrieved by the orders of the Commissioner (Appeals) both parties filed appeals to the CESTAT. The CESTAT, by a common order, allowed all the Appeals filed by the assessee and dismissed all the Appeals filed by the Revenue.

7. In this factual backdrop, Mr. J. B. Mishra, the learned Advocate appearing for the Appellant, submitted that the CESTAT had erred in allowing the refund claims and holding that no nexus was required between the input service and the output service. The learned Advocate submitted that there has to be a nexus between the input service and the output service, and without such a nexus being proved, the refund cannot be allowed. He took us through the order of the CESTAT, where it held as under :-

“6. The provisions regarding grant of refund of cenvat credit are contained in Rule 5 of the Cenvat Credit Rules, 2004. The said rule prior to its amendment by Section 74 of the Finance Act, 2010 provided for refund of cenvat credit of duties/taxes paid on inputs/input services, “used in” providing output services, which are exported without payment of service tax. In view of the phrase “used in” appearing in Rule 5 *ibid*, there were confusions with regard to the services on which refund benefit can be granted. The department had interpreted that only the services used directly for provision of the exported output service, would be eligible for grant of refund of service tax paid thereon. To remove the ambiguity in interpreting the said statute, Rule 5 *ibid* was amended with retrospective effect vide Section 74 of the Finance Act, 2010 by substituting the phrase “used for”, in place of “used in”. The said amendment was given the retrospective effect from the date of enactment of Rule 5 *ibid* in the year 2006. Subsequent to amendment of the statute, the Tax Research Unit (TRU), in the Department of Revenue, Ministry of Finance had issued the Circular dated 26.02.2010, clarifying the true scope and purport of such amendment. It has been clarified that the changes in the said rule have been made to ensure that the provisions of the refund notification and the Cenvat Credit Rules are aligned and that refund is granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services.”

7. On reading of the amended statutory provisions and the clarification furnished by the TRU, it appears that the intention of the legislature behind such amendment was to

grant the benefit of refund of the input services used for exportation of the output service. Since, Rule 5 ibid nowhere specifies establishment of one-to-one correlation between the input services and the output service exported, different interpretation cannot be placed to curtail the benefit of refund of Cenvat credit availed on the input services to the assessee-exporter, i.e., the appellants herein, who had exported the output services. Therefore, we are of the view that denial of refund benefit by the authorities below cannot be sustained, without proper substantiation that the output services were not exported by the assessee-appellants. It is an admitted fact on record that the services were actually exported and the export proceeds were realized in convertible foreign exchange through the approved banking channel. We find that by placing reliance on the amendment that took place in Rule 5 ibid, the learned Commissioner (Appeals) vide impugned order dated 28.03.2013 has allowed the refund benefit in favour of the assessee-appellants for the earlier period. But, it is surprising to note as to how the same jurisdictional Appellate Authority has taken a contrary view in the case of the assessee-appellants themselves for the subsequent period, especially when the statutory provisions remain the same for the entire disputed period covered for the earlier cases and the cases involved in the present dispute.

8. *On reading of the order dated 28.05.2014 and 30.03.2017 passed by the learned Commissioner (Appeals), we find that mainly on the basis of the clearly assigned method for earning the export ground of non-establishment of nexus between the disputed services and*

exported output service, he has denied the refund benefit to the assessee-appellants. Further, one of the reasons assigned for rejection of the refund claim is that on the basis of improper documents, the cenvat credit was availed by the assessee-appellants. Rule 14 ibid deals with the situation of recovery of cenvat credit wrongly availed or utilized by the assessee. It has been mandated that for irregular availment or utilization of cenvat credit, recovery proceedings can be initiated by taking recourse to Section 73 of the Finance Act, 1994. The said section provides for issuance of show cause notice and due adjudication of the matter. It is not the case of Revenue that any show cause notice were issued to the assessee-appellants, seeking for recovery of the irregularly availed or utilized cenvat credit. Since, the provisions of Rule 14 ibid have not been invoked, it has to be construed that taking of Cenvat credit is in conformity with the statutory provisions. Therefore, on fulfilment of the condition of exportation of the services, the department cannot whittle down the statutory right of refund entitlement to the assessee-exporter. Further, the requirement under Rule 5 ibid is for exportation of service and adherence to the formula laid down therein. Hence, in our considered view, the department must stick to the provisions of Rule 5 ibid alone for consideration of the benefit of refund provided therein. Reliance on the other rules, especially Rule 3 ibid is not proper and justified, while dealing with the provisions of grant of refund of cenvat credit of service tax paid on the input services, in the eventuality of exportation of the taxable output services. Thus, the impugned order, rejecting the refund claims on the ground of non-compliance of the other

provisions in the cenvat statute cannot be a defensible ground. In this situation, by interpreting the true meaning and scope of Rule 5 ibid, the TRU vide Circular dated 16.03.2012 has clarified that for the purpose of grant of refund on account of exportation of the services, the department has to look into the issue of adherence of the formula prescribed in the statute alone. The relevant paragraph in the said Circular is extracted herein below:

“F. Cenvat Credit Rules, 2004:

F.1 Simplified scheme for refunds:

1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties of taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.”

9. We find that by placing reliance on the Circular dated 16.03.2012, this Tribunal in the case of Acceleya Kale Solutions Ltd. Vs. Commissioner of CGST, Thane – 2019 (369) E.L.T. 803 (Tri.-Mumbai), has allowed the benefit of refund of cenvat credit availed on input services, holding that the nexus aspect cannot be questioned while dealing with the refund applications filed under Rule 5 ibid. Hence, the impugned order upholding rejection of refund applications on the ground of non-establishment of nexus cannot stand for judicial scrutiny.

10.

11. Under the facts and in the circumstances of the

case, as discussed in the foregoing paragraphs, we also do not find any merits in the appeals filed by Revenue in disturbing the findings recorded in the impugned orders passed by the learned Commissioner (Appeals), in allowing the refund benefits to the assessee-appellants.

12. In view of the foregoing discussions and analysis, the impugned orders are modified, to the extent of allowing the appeals in favour of assessee-appellants and dismissing the appeals filed by the Revenue.

13. In the result, the appeals filed by the assessee-appellants are allowed and the appeals filed by Revenue are dismissed. The cross-objection also stands disposed off.”

8. On the other hand, Mr. D. B. Shroff, the learned Senior Advocate appearing for the Respondent, drew our attention to the following:

(i) to the judgement and order of our Court in the assessee's own case dated 12th February 2018 in **Commissioner of S. T., Mumbai-IV versus J. P. Morgan Services Private Limited reported in 2018 (12) G. S. T. L. 270 (Bom)** upholding the order of the CESTAT, which allowed the Respondent's appeal and directed the refund of the input tax credit claimed by the Respondent for an earlier period, i.e., October 2007 to March 2008.

(ii) that the Central Government, in exercise of the powers under Rule 5 of the CENVAT Credit Rules, 2004, issued Notification No. 7 of 2010-CE(NT) dated 27.02.2010, amending Notification No. 5 of 2006 dated 14.3.2006, substituting the words “used in” for “used for” with retrospective effect from 14th March 2006, by section 74 of the Finance Act, 2010. By this notification, the Central Government directed that refund of CENVAT credit shall be allowed in respect of

input or input service used for providing output service which has been exported without payment of service tax.

(iii) that the Tax Research Unit (TRU) circular dated 16th March 2012 stated that a simplified scheme of refunds was being introduced by substituting the entire Rule 5 of the Cenvat Credit Rules, 2004 and that this new scheme did not require the kind of correlation that is needed at present between exports and the input services used in such exports, and the duties or taxes paid on any goods or services would be entitled to be refunded in the ratio of the export turnover to the total turnover. It was his submission that the TRU circular read with the retrospective amendment of the Rule made it clear that no nexus was required after 14th March 2006.

(iv) that even before the retrospective amendment of the Rule, the Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) had issued Circular No. 120/01/2010-ST dated 19th January 2010 which stated that the major reason for causing delay in granting refunds as well as for rejecting the claims is that, as per the wordings of the notification, refund is permitted of duties/taxes only on such input/input services which are either **used in** the manufacture of exported goods or **used in** providing the output services exported, whereas the phrases used in the CENVAT Credit Rules permit credit of services used “whether directly or indirectly, in or in relation to the manufacture of final product” or “for providing output service”. It was stated in the circular that the field formations tend to take the view that for eligibility of refund, the nexus between inputs or input services and the final goods/services has to be closer and more direct than that is required for taking credit. The said circular clarified that as regards the extent of nexus between inputs/input services and export

goods/services, it must be borne in mind that the purpose is to refund the credit that has already been taken and that there cannot be different yardsticks for establishing the nexus for taking of credit and for refund of credit, and that even if different phrases are used under different rules of the CENVAT Credit Rules, they have to be construed in a harmonious manner. Reference was made to the definition of input services in Rule 2 (l) which gives wide scope to the input services for provider of output services by including in its ambit services “used...for providing an output service”. It was clarified that the phrase “used in” mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner and that the following test can be used to see whether sufficient nexus exists, namely, if the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service.

9. Mr. Shroff submitted that in view of the retrospective amendment, the TRU circular after the retrospective amendment, and even the circular of the board before the retrospective amendment, the question of nexus between input service and output service is no longer required. He also relied on the aforementioned order and judgement of our Court in the Respondent’s own case. Mr. Shroff also pointed out that the CESTAT following their earlier order in another case had also held that as the Department had not objected to or challenged the availment of the input credit under Rule 14 of the Cenvat Credit Rules, they now could not deny the

refund. He pointed out that there was no ground in the present appeal against the aforesaid conclusion of the CESTAT. He also pointed out that nine out of the twenty-six appeals were in respect of refunds that were below the monetary limit and therefore not maintainable.

10. In rejoinder, Mr. J. B. Mishra for the Appellant, referred to paragraph 3 of the judgement in the Respondent's own case which stated as under:

“3. If these services styled as “Input Services” and 21 in number in the 1st matter have been found to be having a direct co-relation on nexus with the service that is exported, then, we do not see why the Tribunal's order should irritate and agitate the Revenue officials to such an extent as compelling them to bring appeals after appeals.”

He submitted that the said judgement makes it clear that there has to be a correlation/nexus between the input service and the output service that is exported.

11. We have considered the rival submissions made by the parties. We find that the issue of nexus/correlation is no longer an issue in view of the retrospective amendment to Notification No. 5/2006 with effect from 14th March 2006 where the earlier words “used in” were substituted by the words “used for”. The TRU circular also makes it clear that this amendment was

brought about to simplify the scheme of refunds and that the new scheme did not require the kind of correlation that was needed between exports and input services used in such exports. The Board's Circular of 2010, which was issued prior to the retrospective amendment coming into force, also made it clear that the words "used in" in Notification No. 5/2006, as it existed, had to be read harmoniously with Rule 2 (l), which defined and included within its ambit all services used in or in relation to the manufacture of final products and includes services used directly or indirectly. It was clarified that Rule 2 gave wide scope to the input services for provider of output services by including within its ambit services "used... for providing an output service" and clarified that the wordings of the notification and Rule 2 (l) must be read harmoniously.

12. The CESTAT, in its order, has also referred to the aforesaid facts and has rightly concluded that no nexus was required between input services and output services.

13. With regard to the submission of Mr. J. B. Mishra that this Court had, in paragraph 3 of the judgement in the Respondent's own case (*supra*) upheld the necessity of nexus/correlation, we find that this was not the conclusion of the judgement, and that the Learned Judges had merely recorded that as the Tribunal had found that there was a nexus between the

input services and the output services there was no reason for the revenue to file an appeal.

14. In these circumstances, no substantial question of law arises in the above appeals. We, accordingly, uphold the order of the CESTAT and reject these twenty-six appeals filed by the revenue.

15. There will be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]