

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

SERVICE TAX APPEAL NO: 85515 OF 2021

[Arising out of Order-in-Appeal No: DL/29/APPEALS THANE/TR/2020-21 dated 27th August 2020 passed by the Commissioner of GST & Central Excise (Appeals Thane), Mumbai.]

Perrigo Laboratories India Private Limited

Plot No. 39, Additional MIDC, Anand Nagar, MIDC
Ambarnath (East), Thane-421506

... ***Appellant***

versus

Commissioner of Central Excise
Thane Rural 12th Floor, Lotus Infocentre,
Near Parel Station, Parel East, Mubai-400012

...***Respondent***

APPEARANCE:

Shri Ankit Shah, Chartered Accountant for the appellant

Shri Dhananjay Dahiwale, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: 85396/2026

DATE OF HEARING: 22/01/2026
DATE OF DECISION: 02/03/2026

In this second round of litigation that travelled back for denovo adjudication with remand order of the Commissioner (Appeals), refund sought by exporter-appellant for ₹ 99,23,772 on account of unutilized CENVAT credit under Rule 5 of CENVAT

Credit Rules, 2004 for the period from 2017 to March 2017 *vide* application dated 28th December 2017, that was partly allowed earlier but finally rejected to the extent of ₹ 44,90,596/- by the refund sanctioning authority, that received approval of Commissioner (Appeals) in his above noted order, is assailed before this forum.

2. Heard the submissions made the parties.

3. Learned Counsel for the appellant submitted that appellant is a 100% EOU (Export Oriented Unit) holding service tax registration and it was engaged in providing 'Scientific and Technical Consultancy Service' as well as 'Business Auxiliary Service' to its client situated outside India and it sought for the refund of unutilized CENVAT credit component but an amount of ₹ 44,72,294/- was rejected on ground of non-availability of original invoice against such claim. After perusal of appeal paper-book and the copy of show cause notice dated 23rd March 2012 *vide* para 7 it can be placed on record without hesitation that only on ground of non-availability of supporting invoice, the said refund was denied, though on other points also arguments were led.

3.1. As could be noticed from the order-in-original dated 27th February 2018, instead of one invoice with consolidated figure of ₹ 44,72,264/-, the appellant had produced 3 invoices with same invoice number having the extension no. 16, 17 and 18, adding up of all of which amount would match with the claimed amount.

In para 23 of the order-in-original, which is reproduced below, it is clearly noted by the Adjudicating Authority as follows:

"23. in respect of invoice no. PAI/15-16dtd. 31.03.2016, the assessee furnished three invoices for claiming service tax credit of Rs. 44,72.264/-.

Sr. No	Invoice No.	Dale	Name of the service provider	Value of the service	Service tax	Description of service
1	PAI/2015-16/16	31-03-16	Perrigo API India Pvt. Ltd.	1081661	1256284	Shared Service for the period Apr 01, 2013 to Mar 31, 2014
2	PAI/2015-16/17	31-03-16	Perrigo API India Pvt. Ltd.	3336710	1716565	Shared Service for the period Apr 01, 2014 to Mar 31, 2015
3	PAI/2015-16/18	31-03-16	Perrigo API India Pvt. Ltd.	4314608	1499415	Shared Service for the period Apr 01, 2015 to Mar 31, 2016
				TOTAL	4472264	"

3.2. Also on going by the Order-in-Original in *denovo* proceedings, it reveals from para 15(ii) that assessee had submitted three invoices which are numbered as PAI/2015-16/16, PAI/2015-16/17 and PAI/2015-16/18 all dated 31/03/2016 for which he agreed with the order passed by the refund sanctioning authority in disallowing the refund of ₹ 44,72,264/-. Interestingly, the Commissioner (Appeals) in his order, appears to have been passed mechanically, has put a noting at para 7.1 that to arrive at quantification of refund, the appellant failed to produce the required/necessary documents. It appears from the discussions

made by the adjudicating authority and Commissioner (Appeals) in their respective orders that only on account of placing the consolidated figures available in three invoices having same invoice number with extension numbers added to these invoices as 16, 17 and 18, against which three separate invoices were produced to justify such availment of credit and consequential refund, benefit provided under section 5 of the CENVAT Credit Rules, 2004 to promote export by grant of refund of accumulated unutilized CENVAT credit, has been denied to the appellant despite the fact that appellant was in possession of those invoices but apparently due to clerical mistake or erroneous ascertainment made by them, they have put the consolidated figure of three invoices having same initial number. I am, therefore, of the considered view that the appellant is entitled to get the refund which is held to be inadmissible to it only for want of invoices, as reveals from para 9 of show cause notice dated 23/03/2018 and it would succeed in this appeal on this score alone. Therefore, the submission made by the Learned Authorized Representative that the order-in-appeal reveals non-production of documents in unsustainable in both facts and law.

4. Learned Counsel for the appellant also pointed out during the course of arguments that in the absence of notice for recovery of inadmissible credit issued under rule 14 of CENVAT Credit Rules, 2004 no refund can be denied to the exporter as has been held in several precedent decisions cited by him on this issue

including those reported in *Qualcomm India Pvt Ltd vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad-IV [2020 (43) GSTL 402 (Tri-Hyd.)]*, *Commissioner of Service tax, Mumbai vs. Exxon Mobile Co. India Pvt Ltd [2015 (37) STR 591 (Tri-Mumbai)]*, *BNP Paribas India Solutions Pvt Ltd vs. Commissioner of CGST, Mumbai East [2022 (58) GSTL 539 (Tri-Mumbai)]*, *Credit Suisse Business Analytics India Pvt Ltd vs. Commissioner of CGST, Navi Mumbai [(2023) 9 Centax 248 (Tri-Bom)]*, *Cross Tab Marketing Services Pvt. Ltd. Vs Commissioner of CGST, Mumbai East [2021 (55) GSTL 29 (Tri-Mumbai)]* and *Societe Generale Global Solutions Pvt Ltd vs. Commissioner of Service Tax, Bangalore, [Final Order No. 20724-20725/2023 dated 17.07.2023 in Service Tax Appeal No. 21477 of 2015 and 21522 of 2015]*.

5. I find force in his submission made on this point. There is no requirement in delving into other grounds raised in the appeal including relationship/nexus between input and export service and if services provided by the appellant falls under the category of 'export of service' as the show cause notice proposed for rejection of the refund amount restricts it to unavailability/non-production of invoice. There is no pleading available in respect of the differential amount of ₹ 18,332/-, i.e., the difference between the rejection of the total amount of credit as inadmissible and the value of these three invoices put together for which no order is required to be passed concerning its legality. Hence the order.

ORDER

6. The appeal is allowed and the order passed by the Commissioner (Appeals) *vide* Order-in-Appeal No. DL/29/APPEALS THANE/TR/2020-21 dated 27th August 2020 is hereby modified to the extend of allowing refund of ₹ 44,72,264/- with applicable interest, which respondent-department is directed to pay within two months of receipt of this order.

(Order pronounced in the open court on 02/03/2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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