CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85404 of 2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/42/16-17 dated 30.11.2016 passed by the Commissioner (Appeals-I), Service Tax, Mumbai)

M/s Tata Realty & Infrastructure Ltd. **.... Appellant**
Elphinstone Building, 2nd Floor,
10, Veer Nariman Road,
Mumbai – 400 001

Versus

Commissioner of Service Tax-I, Mumbai **.... Respondent**
115, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai – 400 020

APPEARANCE:

Shri S.S. Gupta, Advocate for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85868/2026

Date of Hearing: 07.07.2026
Date of Decision: 07.07.2026

PER: S.K. MOHANTY

Brief facts of the case are that during the disputed period April 2009 to September 2009, the appellants had entered into an agreement with M/s TRIF Management (Mauritius) Ltd., (herein after, for short, referred to as "TML") for providing investment advisory services. The recipient of service is located in Mauritius, that is outside India. As per the agreement dated 10.12.2007, the services provided by the appellants *inter alia*, include identifying and advising potential opportunities for investments; providing reports on financial, economic and market intelligence on the companies in which funds could be invested (portfolio companies); updating TML on the performance of the portfolio-companies and furnishing TML with information required for monitoring portfolio-companies; advising TML on the timing, consideration, terms, mode and manner of investment/

disinvestments; and providing any other advisory services as may be directed by TML. For provision of such services, the appellants had procured various input services on which service tax was duly discharged by the provider of such services. On the basis of the invoices issued by the service providers, the appellants had availed CENVAT Credit of service tax paid on such input services. Since the output services were exported by the appellants, there was no scope for utilization of the accumulated CENVAT Credit and accordingly, the appellants had filed a refund application before the jurisdictional Service Tax authorities, claiming refund of unutilized CENVAT Credit available in their books of accounts. The refund application was filed under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 5/2006-C.E. (N.T.) dated 14.03.2006. The refund application filed by the appellants was favourably considered by the original authority vide order dated 30.06.2011, in sanctioning the refund claim amounting to Rs.44,46,438/- as per the provisions of Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax matters by virtue of Chapter-V under Section 83 of the Finance Act, 1994. However, the original order dated 30.06.2011 was reviewed by the Committee of Commissioners and it was directed to file an appeal against the said adjudication order before the learned Commissioner (Appeals). The appeal filed by the Revenue was disposed of by the learned Commissioner (Appeals), Service Tax, Mumbai vide the impugned order dated 30.11.2016, in allowing the appeal filed by the Revenue. In support of allowing the appeal of Revenue, the learned Commissioner (Appeals) has recorded the following observations in the impugned order: -

> *"It can be seen from the above circular that a service cannot be said to be used outside India in a situation where the service, though paid by a client located outside India, is actually used in respect of a project or an activity in India. Further, "accrual of benefit" cannot be restricted to the person who pays for the service. In this case, the appellant was required to provide service in relation to investment opportunities in India and the same were used for investment in connection with an activity of business of Indian companies and their related investment running in India. Obviously, the effective use and enjoyment of service provided in the present case was possible in India only use and enjoyment of the service provided in the present case cannot be determined solely on the basis of the fact that the service recipient has remitted the consideration for the service in foreign exchange from outside India as clarified in the above circular."*

Feeling aggrieved with the impugned order dated 30.11.2016, the appellants have preferred this appeal before the Tribunal.

2. Learned Chartered Accountant appearing for the appellants submitted that pursuant to the agreement dated 10.12.2007, the appellants had provided the Consulting/Advisory services to the overseas entity on 'principal to principal basis', and since no services were provided on behalf of TML to the clients/customers located in India, the requirement of 'export of service' as per Rule 3(1)(iii) of Export of Service Rules, 2005 has been duly complied with for consideration as 'export of service', for which the benefit of refund provided under Rule 5 of the CENVAT Credit Rules, 2004 should be available. He has relied upon the orders passed by this Tribunal in the case of *Goldman Sachs (India) Securities Pvt. Ltd. Vs. Commissioner of Service Tax-V, Mumbai – 2024 (1) TMI 1438 – CESTAT MUMBAI*, Commissioner of GST & Central Excise Vs. Sundaram Asset Management Co. Ltd. – 2023 (11) TMI 471 - *CESTAT CHENNAI,* and *Principal Commissioner of Service Tax, Mumbai Vs. Q-India Investment Advisory Pvt. Ltd. – 2017 (10) TMI 754 – BOMBAY HIGH COURT,* to state that investment advisory services provided to the foreign entity is to be considered as export of service inasmuch as the services were used outside India for the benefit of overseas entity.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. We find that the learned Commissioner (Appeals) in the impugned order dated 30.11.2016 has rejected the claim of the appellants towards export of service, holding that the appellants were required to provide service in relation to investment opportunities in India and the same were used for investment in connection with an activity of business of Indian companies and their related investment running in India. Since, for analyzing market study about investment and submission of research report/financial reports, the appellants have charged to the overseas entity in convertible foreign exchange, it cannot be said that they had provided any service to the Indian customers/clients belonging to overseas entity. Further, it is not the case of R
evenue that in the agreement entered between the appellant and the overseas entity, there was any reference of provision of any service in particular to the clients/customers in India. Furthermore, the appellants had not entered into any agreement with the clients/customers of the

overseas entity i.e., TML for provision of any specific services to them. It is also an admitted fact on record that the appellants had issued invoices in favour of the overseas entity, claiming their service charges in foreign currency i.e., US dollar. Thus, the requirement of export of service, in our considered view, is duly complied with for consideration of the provision of service as export.

6. We find that Co-ordinate Bech of this Tribunal in the case of *Goldman Sachs (India) Securities Pvt. Ltd. (supra)* has held that investment advisory services provided to overseas entity is to be considered as 'export of service', as the services were used outside India. This view has also been endorsed in the case of *Sundaram Asset Management Co. Ltd. (supra)*. Further, in the case of M/s *Q-India Investment Advisory Pvt. Ltd. (supra),* the Tribunal has held that though the analysis, research reports had been carried out in India, but the same were provided to a company located in USA and that service recipient had paid the service charges in convertible foreign exchange, accordingly, the same be treated as export of service.

7. In view of the fact that the appellant had exported the services to the overseas entity/recipient, such service should be considered as 'export of service' and the resultant benefit of refund of the accumulated CENVAT Credit available in the books of account should be available to the appellants.

8. In view of the foregoing discussions, we do not find any merits in the impugned order dated 30.11.2016 passed by the Commissioner (Appeals). Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha