CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60568 of 2016

[Arising out of Order-in-Appeal No. 107/ST/Appeal-II/MK/GGN/2016 dated 29.07.2016 passed by the Commissioner (Appeals), Service Tax, Gurgaon]

Commissioner of Service Tax, Delhi-IV **……Appellant**
Plot No.36-37, Sector-32, Opp. Medanta Hospital,
NH-IV, Gurugram, Haryana - 121001

VERSUS

M/s BA Call Centre India Pvt. Ltd. **……Respondent**
DLF Plaza Tower, DLF City Centre, Phase-I,
DLF Qutub Enclave, Gurgaon, Haryana-122002

APPEARANCE:

Shri Narinder Singh, Authorized Representative for the Appellant

Ms. Priyanshi Chakraborty, Advocate for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60232/2026

DATE OF HEARING: 10.11.2025
DATE OF DECISION: 09.03.2026

S. S. GARG:

The present appeal, filed by the Revenue, is directed against the Order-in-Appeal dated 29.07.2016 passed by the Commissioner (Appeals) whereby it has been held that call center services provided by the respondent qualify as export of services under Rule 3(2) of the Export of Service Rules, 2005 and consequently, the

respondent is eligible to the rebate claim for the period April 2008, May 2008 to January 2009.

2. Briefly the facts of the present case are that the respondent is engaged in the provision of call center services to its overseas entity, British Airways, based in United Kingdom ("BA UK") in terms of the Masters Services Agreement dated 20.11.2007 and as per the Agreement, the respondent was engaged to provide call center service for which consideration was paid on a cost plus markup basis. The services were provided, in terms of the Agreement, to customers of BA UK in Asia Pacific region, including India, Dubai, Sydney and Singapore. During the relevant period, the respondent had exported 100% of its service to BA UK and had also duly discharged service tax on the same and was eligible to claim rebate of service tax paid by virtue of Rule 5 of the Export of Service Rules, 2005 read with Notification No.11/2005-ST F. No. B2/4/2004-TRU dated 19.04.2005 and accordingly filed the rebate claims stating that the rebate claim was rejected by the Deputy Commissioner Gurgaon vide Order dated 04.10.2010 on the ground that destination of consumption of service tax ended with performance of service in India and therefore, the call center service provided by the respondent during the relevant period do not qualify as exports in terms of Rule 3(1)(III) of Export Rules, relying on the judgment of Hon'ble Apex Court in the case of All India Federation Practitioner – 2007 (7) STR 6 to 5 (SC). The respondent filed appeal before the Commissioner (Appeals) who vide its order dated 29.02.2012 remanded the matter to the adjudicating authority to process rebate

claim in terms of CBEC Circular No.111/05/2009-ST dated 24.02.2009. Thereafter, the Assistant Commissioner, Gurgaon rejected the claims vide Order-in-Original dated 13.04.2016 on the grounds that call center services provided by Call BA do not qualify as export of services as it does not satisfy the condition of "Used Outside India". Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) Gurgaon and vide Order dated 29.07.2016, he allowed the appeal of the appellant. Aggrieved by the said order, Revenue has filed the present appeal.

3. Heard both sides and perused the material on record.

4. Learned AR for the Revenue submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the Export of Service Rules, 2005. He further submits that Rule 3(2) of Export of Service Rules, 2005 mandated that the provisions of any taxable service specified in sub rule (1) shall be treated as export of service when the following conditions are satisfied.

(a) Such service is provided from India and used outside India; and

(b) Payment of such service provided outside India is received by the service provider in convertible foreign exchange.

5. Learned AR further submits that the present case relates to rebate claim filed by the respondent under Rule 5 of Export of Service Rules, 2005 read with Notification No.11/2005-ST dated 19.04.2005 and this is not a case of refund of accumulated credit on input services. He further submits that the Commissioner (Appeals)

has relied upon the decision of Single Member Bench in the respondent's own case vide Final Order No. A/52495/2016-SM dated 21.07.2016 without appreciating the facts of the case. He further submits that the Call Center Support Services provided by the respondent to British Airways is partly used outside India and therefore does not qualify for export under Rule 3(2) of Export of Service Rules, 2005 for the material period. Learned AR further submits that Circular No.141/10/2011-TRU dated 13.05.2011 is not applicable in the present case as the facts are entirely different.

6. On the other hand, learned counsel for the respondent submits that this issue is no longer res integra and Call Center Support Services provided by the respondent qualify as export of service and the same has been held so by the Tribunal in the respondent's own case in Commissioner of Central Excise & ST, Delhi Vs M/s BA Call Center India Pvt. Ltd. – 2017 (4) TMI 1178-CESTAT Chandigarh. He further submits that in the said decision, the Tribunal has relied upon the decision in the case of Paul Merchants Ltd. Vs CCE, Chandigarh [2012-TIOL-1877-CESTAT-DEL]. He further submits that the Tribunal, for the period July 2008 to September 2009 and January 2010 to February 2011, has held that it is an export of service and the respondent is entitled to refund claim. He further submits that in the appellant's own case for the period October to December 2009 reported in M/s BA Call Center India Pvt. Ltd. Vs C.S.T Gurgaon – 2016 (8) TMI 589- CESTAT New Delhi, the Tribunal has decided the issue in favour of the respondent.

7. Learned Counsel further submits that the services provided by the respondent qualify as export of service. He further submits that as per Rule 3(2) of the Export of Service Rules, 2005, the following two conditions should be fulfilled for the service to be treated as export of services:

(a) Such service is provided from India and used outside India; and

(b) The payment of such service is received in convertible foreign currency.

8. Learned Counsel further submits that the sole contention raised by the Department pertains to the condition that the services must be used outside India, which, according to the Department, has not been satisfied by the respondent. Learned Counsel further submits that the phrase "used outside India" was clarified vide Circular No.111/05/2009-ST dated 24.02.2009 and thereafter another Circular No.141/10/2011-TRU dated 13.05.2011, further clarified that the phrase "used outside India" should be interpreted in the context where the effective use and enjoyment of the service has been obtained. He further submits that a conjoint reading of Rule 3(2), Circular dated 24.02.2009 and Circular dated 13.05.2011, supports the accrual of benefit. He further submits that the position that the place where the benefit accrues is the place of provision of service and the same is also supported by the following decisions of the Tribunal:

- Paul Merchants Ltd. Vs CCE, Chandigarh – 2012-TIOL-1877-CESTAT-DEL

- Vodafone Essar Cellular Ltd. Vs CCE, Pune – 2013 (31) STR 738 (Tri. Mumbai)
- Microsoft Corporation (I) Pvt. Ltd. Vs Commr. Of S.T., New Delhi – 2014 (36) STR 766 (Tri. Del.)

9. Learned Counsel further submits that the above decisions, relied upon by the respondent, have been upheld by the Hon'ble Supreme Court in the case of Commissioner of Service Tax-III, Mumbai Vs Vodafone India Ltd. (2025) 33 Centax 152 (SC). He also submits that in the present case, the call center services have been used by BA UK, situated outside India, as the said services have direct impact on the operations of British Airways. He also submits that the respondent has no contractual relationship with the end-customer or passenger and the services rendered are in accordance with the terms of the agreement with BA UK and when the services are provided to BA UK, for the benefit of BA UK, the services are used outside India and the requirement prescribed in Rule 3(2) of the Export of Service Rules stand satisfied in the present case. Learned Counsel also relies upon the decision in the case of Arcelor Mittal Stainless (I) Pvt. Ltd. Vs Commissioner of Service Tax, Mumbai – II (2023) 11 Centax 269 (Tri. LB) wherein it has been held that the recipient of service is the person at whose instance and expense, the service is provided and in the present case, it is clear from the agreement that service is provided to BA UK and the consideration is also paid by BA UK. Therefore, the recipient of service is BA UK.

10. We have perused the submissions of both the parties and perused the material on record as well as the rules relating to export

of service rules. The only issue involved in the present case as whether the services provided by the respondent to BA UK falls under the definition of Export of Service and consequently the respondent is entitled to refund of rebate claim paid by him. We find that the issue is no longer res integra as the Tribunal in the respondent's own case for the previous and subsequent period in view of the agreement has held or after considering the agreement between the parties has held that the services provided by the respondent to BA UK fall in the definition of "Export of Services" and the Department has not challenged the same and there is no stay on the said decision. Further, we also find that as per the Export of Service Rules also, two conditions need to be fulfilled for the service to be treated as export of service viz. such service is provided from India and used outside India and payment of such service is received in convertible foreign exchange. The word used "outside India" was also clarified by the Department vide its Circular dated 24.02.2009 and also vide Circular dated 13.05.2011 wherein it has been clarified that the phrase used "outside India" should be interpreted in the context where the effective use and enjoyment of the service has been obtained. Further, we find that this issue has been considered by various Benches of the Tribunal in the cases relied upon by the respondent cited supra viz. Paul Merchants Ltd., Vodafone Essar Cellular Ltd. & Microsoft Corporation (I) Pvt. Ltd. (all cited supra). These cases are upheld by the Hon'ble Supreme Court in the case of Commissioner of Service Tax-III, Mumbai Vs Vodafone India Ltd. (supra). Similarly, Larger Bench of the Tribunal, in the

case of Arcelor Mittal Stainless (I) Pvt. Ltd. (supra), has held as under:

> "49. It is, therefore, clear that the recipient of service is the person at whose desire the activity is done in exchange for a consideration, i.e., the person who is obliged to make payment for the service. The recipient of service would, therefore, be a person at whose instance and expense the service is provided, whether or not he is the beneficiary of the service."

11. Further, we find that in the present case, it is clear from the agreement between the parties that service is provided to BA UK and the consideration is also paid by BA UK and therefore, the recipient of service as BA UK and the said services qualify as export of service because the said services are used outside India.

12. In view of our discussion above, we are of the considered opinion that there is no infirmity in the impugned order and we uphold the same while dismissing the appeal of the Revenue.

(Order pronounced in the open court on 09/03/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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