

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 2

**Service Tax Appeal No. 271 of 2011**

(Arising out of Order-in-Appeal No. 45/2010 dated 26.10.2010  
passed by the Commissioner (Appeals), LTU, Bangalore.)

**Dell India Pvt. Ltd.**

Divyashree Greens, Ground Floor,  
12/1, 12/2A, 13/1°, Challaghatta Village,  
Verthur Hobli, Bangalore South,  
Bangalore - 560 071.

Appellant(s)

*VERSUS*

**The Commissioner of Central  
Excise and Service Tax  
(Appeals),**

Large Tax Payers Unit (LTU),  
JSS Towers, 100Ft. Road, Banashankari  
III Stage, Bangalore - 560 085.

Respondent(s)

**APPEARANCE:**

Mr. Syed M Peeran, Mr. Siddhartha Bayle and Ms. Samruddhi Shetty,  
Advocates for the Appellant

Ms. Money Jain, Joint Commissioner, Authorised Representative for the  
Respondent

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)  
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 21624 / 2025**

DATE OF HEARING: 13.06.2025

DATE OF DECISION: 16.10.2025

**PER : R. BHAGYA DEVI**

This appeal is filed by the appellant M/s. Dell India Pvt. Ltd.  
against Order-in-Appeal No.45/2010 dated 26.10.2010 passed  
by the Commissioner (Appeals) LTU Bangalore.

2. Briefly the facts are that the appellant is engaged in  
marketing and promotion of products of Dell Global GV (DGBV)

in India and classified these services under the category of Business Auxiliary Service and considering these services as export of services, filed a rebate claim under Notification No. 11/2005-ST dated 19.04.2005 read with Rule 5 of Cenvat Credit Rules, 2004. These refund claims were rejected by the Commissioner (Appeals) on the ground that the services undertaken by the appellant cannot be considered as export of services and the credit taken by the appellant was ineligible credit, hence, question of refund did not arise. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submitted that the activities undertaken by them to Dell Asia Pacific, Malaysia and Dell Global GV (DGBV) are the foreign entities. The appellant provides technical logistical and marketing support to the above foreign entities in lieu of which they receive consideration on cost plus markup basis from them in convertible foreign exchange. Referring to the Rule 3 of Export of Service Rules, 2005, it is submitted that they satisfy the conditions laid down therein in as much as the services are rendered to a recipient located outside India and the payment is received in convertible foreign exchange. Relying on the decision of the Larger Bench in the case of **Arcelor Mittal Stainless (I) Pvt. Ltd. Vs. CST Mumbai: 2023 (8) TMI 107** and in the case of **Sun Microsystems (I) Pvt. Ltd Vs. CCE & ST. Bangalore 2023 (9) TMI 647**, it is stated that their services are rightly to be considered as export services.

3.1 With regard to the second ground for rejecting the claim on the ground of ineligible credit, it is submitted that the show-cause notice does not allege irregular availment of cenvat credit, hence, denial of refund on the ground which is not alleged in the show-cause notice is to be considered as beyond the scope of show-cause notice as held by the Hon'ble Supreme Court in the case of **Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd.: 2006 (201) ELT 513 (S.C.)** and

**Commissioner of Central Excise vs. Brindavan Beverages (P) Ltd.: 2007 (213) ELT 487 (S.C.)**. Further it is submitted that while deciding the rebate claim, the Revenue cannot dispute eligibility of cenvat credit as held by the Hon'ble Telangana High Court in the case of **CCE, Hyderabad Vs. Qualcomm India Pvt. Ltd.: 2021-VIL-766-TEL-ST**. The appellant also submits that the show-cause notice dated 21.10.2009 and 23.10.2009 which questioned the eligibility of cenvat credit was confirmed vide Order-in-Original No. 72/2010 dated 18.11.2010 and Order-in-Original No. 76/2010 dated 24.11.2010, respectively. Appeal filed against Order-in-Original No. 72/2010 was disposed of by this Honb'le Tribunal vide Final Order dated 03.12.2024 as withdrawn since the appellant had availed the benefit of SVLDR scheme and the Order-in-Original No. 76/2010 for the period April 2008 to March 2009, was set aside by this Tribunal vide Final Order dated 06.07.2020 allowing the benefit of the rebate claim.

3.2 With regard to the issue that since appellant is engaged in trading, they are not entitled to avail and utilize credit on common input services, it is submitted that trading activity was not an exempted service during the relevant period since it was included within the scope of exempted service only after amendment to Rule 2(e) vide Notification No. 3/2011-CE (NT) dated 01.03.2011 read with Cenvat Credit Rules, 2004. Relied on the following decisions :

- **CCT, Bangalore Vs. Lenovo India Pvt. Ltd.: 2021 (11) TMI 899**
- **Ingersoll-Rand Technologies Vs. Commissioner 2022 (8) TMI 877**

4. The learned Authorised Representative (AR) on behalf of the Revenue submitted that since the goods were delivered to the customers in India, the services rendered by the appellant cannot be considered as export of services. It is further stated that since the Commissioner (A) has not looked into the invoices against the FIRC's, the same needs to be sent back for verification.

5. Heard both sides. The issues involved are with regard to rebate claims dated 06.03.2009 for the period April 2007 to March 2008 and rebate claim dated 01.06.2009 for the period April 2008 to March 2009.

6. The first issue is whether the marketing support services undertaken by the appellant fall under the category of 'Export of Service' as per the provisions under the Export of Service Rules, 2005. It is not in dispute that Dell India provided the marketing support services to their foreign entities by identifying the prospective customers and in turn, the foreign entities sold their products to the customers in India. The Commissioner (A) in the impugned order observed that since the ultimate consumption of the products happened in India, they cannot be considered as Export of Service. This issue is no longer *res integra* in as much as the Larger Bench in the case of **Arcelor Mittal Stainless (I) Pvt. Ltd. vs. CST Mumbai** (supra) in a similar set of facts observed as follows:

**51.** The reasoning adopted by the department is that the services of commission agent were used in India to cater to the Indian markets. It is not possible to accept this reasoning of the department. The Circular dated 24-2-2009 also categorically states that for the services to fall under rule 3(1)(iii) of the 2005 Export Rules, the relevant factor is the location of the service receiver. In other words, the place of performance of the service or the place where the customers of the service receiver are located is irrelevant.

**52.** As noticed above, it was the consistent view of the High Courts and the Tribunal that export of service would take place under rule 3(1)(iii) of the 2005 Export Rules if a person residing in India provides a service to a foreign entity to enable it to book orders for customers in India. This is for the reason that the foreign entity is located outside India and the payment is received by the person residing in India in convertible foreign exchange.

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**54.** The four issues raised in the reference order have been dealt with extensively and as they are intermingled, the reference is answered in the following manner:

- I. Arcelor India, a service provider, is providing BAS service to Arcelor France, which is a service recipient. Arcelor India is, therefore, providing service to Arcelor France which is situated outside India and Arcelor India receives consideration in convertible foreign exchange. The service provided by Arcelor India is, therefore, delivered outside India and used outside India as is the requirement under the 2005 Export Rules prior to 1-3-2007 and Arcelor India provides services from India which are used outside India as is the requirement after 1-3-2007. It cannot, therefore, be doubted that Arcelor India provides 'export of service' as contemplated under rule 3 of the 2005 Export Rules; and
  - II. Arcelor France is an agent of the foreign steel mills and Arcelor India is its sub-agent. Arcelor India provides the necessary details of the customers in India to the foreign steel mills and, thereafter, the foreign steel mills and the Indian customers execute a contract for supply of the goods. The goods are directly supplied by the foreign steel mills to the Indian customers. Arcelor India also satisfies condition (b) of rule 3(2) as payments for such service have been received in convertible foreign exchange".
7. The period of dispute being from April 2007 to March 2009, it is necessary to examine the amendments to the Export of Service Rules, since the above decision is applicable only prior to 01.03.2007. We find that Notification No. 30/2007 dated 22.05.2007 in sub-rule (2) clause(b) the words "provided outside India" was omitted and the other amendments brought in vide Notification No. 5/2008, 20/2008 and 30/2009 have no implication, hence, during the disputed period, the decision of the Larger Bench holds good. Hence, the demand against this ground cannot be sustained.
8. The first show-cause notice dated 23.03.2009 was issued on the following grounds:
- "3. On verification of documents submitted with the claim, the following discrepancies were noticed / documents not submitted
    - a. Actual activities involved in providing the export of taxable service, nature of the services exported & input services that have been used to create export service to be furnished along with brief write-up. (with the

details of invoice number, date, name of the service provider along with the payment particulars)

Sl. No.	Service claimed as "input Service Indicate name of the service in particular and classification of service under section 65(105) of the FA 1994	Amount of Credit involved in Rupees	How is the service used in creating the export service	Percentage of input Service used in creation of the export service.
1	2	3	4	5

- b. Copies of the input services invoices along with the CENVAT credit statement and ledger extract of payment details.
- c. Copy of Service tax registration Certificate/Input Service Registration Nos of input service providers.
- d. Copy of the Registration Certificate has not been enclosed with the claim.
- e. Co-relation of FIRCS with Export Invoices and the ST-3 returns correlation with the export and the payment of service tax by CENVAT has not been done".

And the second show-cause notice dated 18.08.2009 was issued on the following grounds:

"5.8 In view of the above, it appears that the rebate claim filed by DIPL on 01.06.2009 for an amount of Rs.4,30,29,062/- under Notification No 11/2005-ST dated 19.04.2005, does not satisfy the following conditions

- (i) The service rendered by them in India cannot be construed to be export of services as Service Tax is destination-based consumption tax and the service so rendered does not fall under the ambit of the definition of export under Section 2(18) of the Customs Act, 1962.
- (ii) From the FIRCS produced, it is seen that there is no correlation between the copies of the Export invoices and the FIRC copies submitted by the assessee
- (iii) No documentary evidence is produced evidencing payment of service tax and cess on such taxable service exported

(ii) From the ST3 returns no amounts are reflected under the "amounts received under export of services"

Therefore, it appears that the rebate claim filed by DIPL on 01.06.2009 for an amount of Rs. 4, 30,29,062/- under Notification No 11/2005-ST dated 19.04.2005, is liable for rejection".

Thus, as rightly argued by the appellant, the denial of cenvat credit on the ground that the same is ineligible credit under the Cenvat Credit Rules, 2004 cannot be sustained in as much as the above observation by the authorities is beyond the scope of the show-cause notice.

9. In view of the above, we find that the grounds based on which the rebate claims have been rejected cannot be sustained. However, since the Commissioner (A) in the impugned order with regard to correlation of export invoices and copies of FIRC has observed that '*there is no need for correlation as the same is not considered as export even though the payments are made in Foreign Currency*', the issue needs to be remanded for verification of the documents. Therefore, in the interest of justice, though on merit the appellant is eligible for the rebate claim, the matter is remanded only to verify the export invoices against the FIRC's copies for the relevant rebate claims.

Appeal is allowed by way of remand.

(Order pronounced in Open Court on 16.10.2025.)

**(P.A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**