

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

EXCISE APPEAL NO. 10825 of 2019-SM

(Arising out of OIA-VAD-EXCUS-002-APP-555-2018-19 Dated 21/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Dystar India Pvt Ltd

Plot No 3002/a, Gidc
Ankleshwar
BHARUCH
GUJARAT

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii

1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA,
GUJARAT-390023

.....Respondent

APPEARANCE:

Shri Vinay Kansara, Advocate appeared for the Appellant

Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

FINAL ORDER NO. 12570/2024

DATE OF HEARING: 29.10.2024

DATE OF DECISION: 29.10.2024

RAMESH NAIR

This appeal is directed against Order-In-Appeal No. VAD-EXCUS-002-APP-555-2018-19 dated 21/12/2018 passed by the Learned Commissioner (Appeals) of Central Excise, Customs and Service Tax-VADODARA-I, whereby the rejection of refund claim made under Section 142 (3) of CGST Act, 2017 read with Section 11B of the Central Excise Act, 1994 of Rs. 27,99,924/- for the period July to December-2017 was upheld, Therefore, the present appeal.

2. Shri Vinay Kansara Learned Counsel appearing on behalf of the appellant submits that as regard the refund claim of Rs. 20,52,143/- and Rs. 2,19,004, the same has been allowed in the revised Trans-1 by the GST authority. However, he submits that the same has not yet been credited in their input tax credit account. Therefore, he is not pressing in respect of these two refund amount.

2.1 As regard the refund claim of Rs. 41,244/- and Rs. 4,87,533/-, it is his submission that the said refund claims were rejected on the ground that after 01.07.2017, the appellant is not eligible for Cenvat credit. Therefore, the same is not refundable under Section 142 (3) of CGST Act, 2017. He submits that this issue has been decided by this Tribunal in the following judgments:-

- Shree Ganesh Remedies Ltd. Vs. CCE & ST CESTAT Final Order No. 11721/2024
- Filatex India Ltd. Vs. CCE & ST VADODARA-II-2024 (8) TMI 393-CESTAT AHMEDABAD

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that as regard the refund claim of Rs. 20,52,143/- and Rs. 2,19,004/- as submitted by learned counsel, the same has been allowed in the revised Trans-1. However, the same has not yet been credited in their electronic credit ledger. In this regard, the appellant has liberty to approach the concerned GST authority for further credit in the Electronic Credit Ledger. Therefore, as regard the refund claim for the amount of Rs. 20,52,143/- and Rs. 2,19,004/- the same became infructuous.

4.1 As regard the refund claim of Rs. 41,244/- and Rs. 4,87,533/-, the same was rejected on the ground that appellant have paid the amount after 01.07.2007, thereafter, no Cenvat credit provision was existing. I find that this issue has been considered by this Tribunal in the case of Shree Ganesh Remedies Ltd wherein dealing with the same issue this Tribunal has passed the following order:-

"4. I have carefully considered the submission made by both the sides and perused the records. I find that the lower authorities have rejected the refund claim made by the appellant under Section 142(3) on the ground that since the service tax itself was paid during the GST regime when the Cenvat Credit Rules were not existing, the service tax paid during that period will not be admissible as Cenvat credit and consequently no refund can be granted. In this regard, I refer to Section 142 (3), which reads as under:-

"(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

From the plain reading of the above Section 142(3), it is observed that the said Section deals with the eventualities when the assessee is not in a position to avail the Cenvat credit. Therefore, the amount of Cenvat credit is refunded in cash, under the said provision. The Section 142(3) also deals with the amount which is accrued prior to GST regime. Accordingly, the situation arose in the present case is exactly the same for which provision of Section 142(3) was enacted. The amount of service tax was pertaining to the period prior to 01.07.2017 which is payable under the existing law. Subsequently, the said amount became admissible as a Cenvat credit under existing law and since the same cannot be availed as Cenvat credit after 01.07.2017, the only option is to refund the same in terms of Section 142(3)."

From the above decision, it is clear that even though the tax/duty paid subsequent to 01.07.2017 but for the period prior to 01.07.2017, the same is eligible as Cenvat credit under existing law. Therefore, only because the Service Tax was paid after 01.07.2017 refund cannot be rejected. However, the refund has to be processed by following the law such as unjust enrichment, etc. Therefore, only for this limited purpose, this matter related to refund of Rs. 41,244/- and Rs. 4,87,533/- is remanded to the adjudicating authority, for passing a fresh order, keeping in view the observation made herein above.

5. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)