

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70242 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1294 to 1297-19-20 dated 08/01/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Landis + Gyr Ltd.,
(Ground to 3rd Floor, Tower-6,
Institutional Plot no.2, Block-6, Sector-62, Noida)
VERSUS

.....Appellant

Commissioner of Central Excise &

Service Tax, Noida

....Respondent

(C-56/42, Renu Tower, Sector-62, Noida-201301)

WITH

I. Service Tax Appeal No.70243 of 2020 (Landis + Gyr Ltd.)

II. Service Tax Appeal No.70244 of 2020 (Landis + Gyr Ltd.)

III. Service Tax Appeal No.70245 of 2020 (Landis + Gyr Ltd.)

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1294 to 1297-19-20 dated 08/01/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

APPEARANCE:

Shri Balram Pandey, Chartered Accountant for the Appellants
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOS.70167-70170/2024

DATE OF HEARING : 21 December, 2023
DATE OF PRONOUNCEMENT : 04 April, 2024

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Appeal No.NOI-EXCUS-001-APP-1294 to 1297-19-20 dated 03/01/2020 of the Commissioner Central Goods Services Tax (Appeals), Noida. By the impugned order four appeals filed by the appellant against four order in original as detailed in table below have

been dismissed, upholding the order in originals holding as follows:

S.No.	Appeal No	Order-in-Original No.	Period Involved.	Amount
1	1010/ST/Noida /APPL/NOI/2017-18	R-294/DC/DIV-III/ST/NOIDA/2016-17	January 2010 to March 2010	3,44,879/-
2	1011/ST/Noida /APPL/NOI/2017-18	R-295/DC/DIV-III/ST/NOIDA/2016-17	October 2009 to December 2009	3,02,757/-
3	1012/ST/Noida /APPL/NOI/2017-18	R-296/DC/DIV-III/ST/NOIDA/2016-17	April 2010 to June 2010	7,18,402/-
4	1013/ST/Noida /APPL/NOI/2017-18	R-293/DC/DIV-III/ST/NOIDA/2016-17	July 2010 to September 2010	20,32,043/-

1.2 Order in Original No R-294/DC/DIV- III/ST/NOIDA/2016-17 dated 31.03.2017:

"Order

- 1. I hereby reject the refund claim for Rs 3,44,879/- (Rs. Three Lakh Forty Four Thousand Eight Hundred and Seventy Nine Only) submitted by the party under section 11B of the Central Excise Act, 1944.*
- 2. I also disallowed the Cenvat Credit of above mentioned amount of Rs 3,44,879/- (Rs. Three Lakh Forty Four Thousand Eight Hundred and Seventy Nine Only) wrongly taken by the party on ineligible input services, on the grounds as discussed above, I also order for the recovery of the said amount from the party under Rule 14 of the Cenvat Credit Rule 2004 read with Section 73 of the Finance Act, 1994, along with the due amount of interest liable thereon.*
- 3. I impose a penalty of Rs 3,44,879/- (Rs. Three Lakh Forty Four Thousand Eight Hundred and Seventy Nine Only) on the party under Section 78 of the Finance Act, 1994, for violation of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE (NT) dated 14.03.2006.*

All the above mentioned dues may be paid by the party forthwith."

1.3 Order in Original No R-295/DC/DIV- III/ST/NOIDA/2016-17 dated 31.03.2017:

"Order

- 1. I hereby reject the refund claim for Rs 3,02,757/- (Rs. Three Lakh Two Thousand Seven Hundred and Fifty Seven Only) submitted by the party under section 11B of the Central Excise Act, 1944.*
- 2. I also disallowed the Cenvat Credit of above mentioned amount of Rs 3,02,757/- (Rs. Three Lakh Two Thousand Seven Hundred and Fifty Seven Only) wrongly taken by the party on ineligible input services, on the grounds as discussed above, I also order for the recovery of the said amount from the party under Rule 14 of the Cenvat Credit Rule 2004 read with Section 73 of the Finance Act, 1994, along with the due amount of interest liable thereon.*
- 3. I impose a penalty of Rs 3,02,757/- (Rs. Three Lakh Two Thousand Seven Hundred and Fifty Seven Only) on the party under Section 78 of the Finance Act, 1994, for violation of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE (NT) dated 14.03.2006.*

All the above mentioned dues may be paid by the party forthwith."

1.4 Order in Original No R-296/DC/DIV- III/ST/NOIDA/2016-17 dated 31.03.2017:

"Order

- 1. I hereby reject the refund claim for Rs 7,18,402/- (Rs. Seven Lakh Eighteen Thousand Four Hundred and Two Only) submitted by the party under section 11B of the Central Excise Act, 1944.*
- 2. I also disallowed the Cenvat Credit of above mentioned amount of Rs 7,18,402/- (Rs. Seven Lakh Eighteen Thousand Four Hundred and Two Only) wrongly taken by the party on ineligible input services, on the grounds as discussed above, I also order for the recovery of the said*

amount from the party under Rule 14 of the Cenvat Credit Rule 2004 read with Section 73 of the Finance Act, 1994, along with the due amount of interest liable thereon.

3. *I impose a penalty of Rs 7,18,402/- (Rs. Seven Lakh Eighteen Thousand Four Hundred and Two Only) on the party under Section 78 of the Finance Act, 1994, for violation of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE (NT) dated 14.03.2006.*

All the above mentioned dues may be paid by the party forthwith."

- 3.2 Order in Original No R-293/DC/DIV- III/ST/NOIDA/2016-17 dated 31.03.2017

"Order

1. *I hereby reject the refund claim for Rs 20,32,043/- (Rs. Twenty Lakh Thirty Two Thousand and Forty Three Only) submitted by the party under section 11B of the Central Excise Act, 1944.*
2. *I also disallowed the Cenvat Credit of above mentioned amount of Rs 20,32,043/- (Rs. Twenty Lakh Thirty Two Thousand and Forty Three Only) wrongly taken by the party on ineligible input services, on the grounds as discussed above, I also order for the recovery of the said amount from the party under Rule 14 of the Cenvat Credit Rule 2004 read with Section 73 of the Finance Act, 1994, along with the due amount of interest liable thereon.*
3. *I impose a penalty of Rs 20,32,043/- (Rs. Twenty Lakh Thirty Two Thousand and Forty Three Only) on the party under Section 78 of the Finance Act, 1994, for violation of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE (NT) dated 14.03.2006.*

All the above mentioned dues may be paid by the party forthwith."

- 2.1 The appellant, having Service Tax Registration no. AAACV9922BST004. filed 4 (four) refund claims under Rule 5 of

Cenvat Credit Rules 2004 (in read with Notification No. 5/2006-C.E. (N.T.) dated 14/03/2006 for refund of cenvat credit taken on inputs/ input services used for export of services.

2.2 On verification, the adjudicating authority found that the appellant being a 100% EOU under STPI Scheme was engaged in exporting "Information technology Software Services". They were also providing such taxable services to own DTA units located in Kolkata and Baddi for which service considerations were received by him in the name of salary and other allowances but did not pay service tax on such service value.

2.3 It was observed that if the appellant would have discharged his service tax liability properly and correctly, there would not have been any accumulated cenvat credit for claiming refund.

2.4 Accordingly the appellant was issued SCNs proposing rejection of the four refund claims in terms of Rule 5 of CCR'04 read with Notification No. 5/2006-C.E. (N.T.) dated 14/03/2006.

2.5 The show cause notices were adjudicated by the original authority as per the order in original referred in para 1.2

2.6 Being aggrieved by the above orders, the appellant filed four appeals as detailed in table para 1 above, which have been dismissed as per the impugned order.

2.7 Aggrieved appellant has filed these appeals.

3.1 I have Shri Balram Pandey Chartered Accountant for the appellant and Shri Manish Raj Authorized Representative for the revenue.

3.2 Arguing for the appellant learned chartered accountant submitted that:

- Impugned order travels beyond the show cause notice hence bad in law.
- SEZ provisions are not applicable to STPI units.
- No show caue notice has been issued demanding the service tax.

- There is no service provider and service recipient relationship between them and their employees.
- No service tax can be levied on the payments made by the employer to their employees.
- There is no dispute to the eligibility of CENVAT Credit.
- As no demand has been confirmed no interest could have been demanded under Section 75.
- Penalty under Section 78 is unjustified.

3.3 Arguing for the revenue learned authorized representative re-iterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 For upholding the orders in original rejecting the refund claims filed by the appellant, impugned order observes as follows:

"6.1 I have carefully gone through the facts and records of the case, submissions made by the appellant in the grounds of appeal and during the personal hearing. The appellant contended that in case of self-services provided to his own units situated in Kolkata and Baddi, the provider and receiver of services are one and same entity and in absence of distinct service provider and receiver, there cannot be any provision of service and there is no service tax liability in the hands of the appellant 6.2 In the above issue, the provisions of Rule 19(7) of the Special Economic Zones Rules, 2006 (in short "the SEZ Rules 2006") are squarely applicable to the appellant's STPI unit, text of which is reproduced below for ready reference:-

"SPECIAL ECONOMIC ZONES RULES, 2006 - CHAPTER III - PROCEDURE FOR ESTABLISHMENT OF A UNIT:

RULE 19(7) If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone unit, it shall have two distinct identities with separate books of account, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity"

6.2 The above provisions of SEZ Rules 2006 mandate that a company operating both under DTA and SEZ/STPI shall have two distinct identities with separate books of account. The Hon'ble High Court of Gujarat at Ahmedabad, in the case of the Commissioner vs. Larsen & Toubro Ltd., reported in 2016 (44) S.T.R. 391 (Guj.) decided that – "Special Economic Zone - Separate identity of units under same company - Principles of Mutuality - Tribunal holding that no Service Tax under Business Support service payable on its providing by SEZ unit of assessee company to DTA unit of same company on aforesaid principle, legal entity of both units being same - Said reasoning disagreed with - For purpose of taxation, units located in SEZ receiving special consideration with regard to exemption, drawback and other concessions Goods supplied inter se SEZ unit and DTA unit of same assessee, considered as import or export - Rule 19(7) of SEZ Rules, 2006 clearly providing for separate distinct entity in the separate books of account, etc., for two units of same assessee located in SEZ and DTA respectively - Thus, notwithstanding a common legal entity, unit situated in SEZ, distinct in identity than another unit of same assessee situated in DTA - Principle of Mutuality not applicable and Service Tax leviable on supply of taxable services by SEZ unit to DTA unit if supplied for consideration.- Rule 19(7) of Special Economic Zones Rules, 2006 Section 66A of Finance Act, 1994."

6.3 All these statutory provisions indicate separate and also artificially created independent existence of a SEZ/STPI unit of a company whether it has another unit situated in DTA or not. In particular, Rule 19(7) of the SEZ Rules, 2006 while recognising that the same legal entity may have two units, one in SEZ/STPI and another in DTA, mandates that the two would have distinct identities with separate books of account. In view of statutory scheme noticed in the Finance Act, 1994 and Special Economic

Zones Act, 2005, the contention of the appellant that the self-services rendered by his STPI unit to his DTA unit, would not be chargeable to service tax, cannot be accepted. If this principle is applied, the very artificial creation of treating a SEZ/STPI unit separate and distinct for accounting, consumption of raw materials, production and clearance purposes would shatter.

6.4 It is also to be noted here that the Central Government is extending certain benefits to SEZ/STPI units for specific purposes of promoting exports and necessary procedures/safeguards have been formulated/prescribed in the Act and Rules thereof to avert misuse of the Scheme and to prevent Revenue leakage. Those stipulated procedures are not mere technical formalities but are stringent and inflexible requirements to be complied with great precision by the units claiming benefits under SEZ/STPI scheme without any deviation. Otherwise, such export promotion schemes like SEZ/STPI will be in a total chaos and interest of Revenue will be jeopardized, All the case laws relied upon by the appellant were relating to the supply of services from SEZ unit to DTA unit of the same company without any service consideration and accordingly it was held therein that service tax was not applicable in absence of any service consideration. On the other hand, in the instant case, the STPI unit of the appellant supplied taxable service to his DTA units admittedly against realisation of service consideration in the facade of salary/allowances and therefore case laws relied upon by him are not applicable here. Accordingly, I find that the contention of the appellant for non-payment of service tax for services provided by his STPI unit to his DTA units is totally against the mandatory pre-condition prescribed under Rule 19(7) of the SEZ Rules 2006 for maintenance of distinct identities with separate books of account relating to SEZ/STPI and DTA units and for the same reason, notwithstanding a common legal entity,

appellant's unit situated in SEZ/STPI is distinct in identity than his other units situated in DTA and Service Tax is leviable on service consideration realized from the DTA Units in the name of Salary and other allowances against supply of taxable services by STPI unit to DTA units.

7. The adjudicating authority also correctly observed that the appellant intentionally misused the provisions of SEZ/STPI scheme with intent to evade payment of service tax by syphoning the tax benefits available exclusively to an EOU/SEZ/STPI unit to non-entitled DTA units, in the disguise of provisioning self-services by his STPI unit to his DTA units and correctly concluded that if service tax was discharged/paid on such service consideration received under the cover of salary/other allowances by the appellant, no credit would be accumulated in the appellant's cenvat credit account and therefore held that no refund under Rule 5 of CCR'04 is payable to the appellant. For the same reason the adjudicating authority correctly denied the cenvat credit, confirmed the demand and ordered for recovery of the same under Rule 14 of the CCR'04 read-with Section 73 of the Finance Act 1994 with due amount of interest leviable thereon. The adjudicating authority also correctly imposed penalty under Section 78 of the Finance Act 1994 for such wilful violation and misuse of provisions of SEZ/STPI scheme and also of Rule 5 of CCR'04 with intent to evade payment of service tax. In the facts and circumstances of the case read- with discussions and findings recorded hereinbefore, I find no merit in appellant's appeal and accordingly hold that the impugned orders issued by the adjudicating authority need no interference at this stage."

4.3 As all the order in original are identically worded I am referring to Order in Original No R-295/DC/DIV-III/ST/NOIDA/2016-17 dated 31.03.2017 in my discussions wherein following findings have been recorded:

"I have carefully gone through the case file i.e. refund claim filed by the party, contents of the SCN, defence reply submitted by the party and the record of personal hearing. From the facts of the case it has been noticed that the party a 100% EOU is engaged in providing the "Information Technology Software Services" where is covered under the definition of taxable services under Section 105(zzzze) of the Finance Act 1994. It has also been noted that in the course of export of the above mentioned taxable service the party also does work for the own manufacturing units situated in Kolkata and Baddi. Thus the party is also providing its services in the Domestic Tariff Area i.e. units located at Kolkata and Baddi and collected the amount (i.e. Service charge) in the form of salary and other allowances from their head office and other units situated at the above mentioned places. As per the Calculation chart provided in the show cause notice itself, the notional sale on this amount comes to Rs. 112087986/- during the period 2008-09 to 2010-11 (upto Nov.2010) on which the service tax liability comes to Rs. 12202050/-

It has also been alleged in the Show Cause Notice that the party has failed to pay the service tax on the value of taxable services so realized by them and have suppressed the facts while filing the refund claim as they have not declared the fact to the department that they are 100% E.O.U under STPI scheme registered with STPI Noida

This fact comes to the notice of the Department when an audit party of Central Excise conducted audit is the premises of the party.

From the facts of the case it is also clear that there is no dispute about the amount of Cenvat Credit taken by the party on various input services arrived by them nor is any disputes regarding filing of refund claim within the time limit as prescribed under Section 11 B of the Central Excise Act, 1944. The only issue involved in this case is as to

whether the party is liable to pay service tax on the value of Services provided by them in the Domestic Tariff Area i.e. to their manufacturing units situated at Kolkata and Baddi or Not.

The party in their defence reply have stated that taxable Services means any service provided or to be provided to any person by any other person in relation to Information Technology Software Service. The party further stated that this legal position indicates that there must be a service provider and receiver of the service. In the instant case the provider and the receiver of the service are one and the same entity, entity itself. Since in the instant case receiver & Provider of services are the same entity, there cannot be any provision of service as Contemplated in the law

Therefore, in the instant case, no service tax liability on self service will arise. The party has also relied upon various Judgments as mentioned herein above.

I have thoroughly examined the issue and found that the citations (case laws) as quoted by the party in their defence are not applicable in this case as the facts & circumstances of this case are quite different to these cases as cited by the party. In the instant case, the party is 100% EOU where is in the cases quoted by the party, there is not such a situation. A 100 % EOU is liable to pay duty / taxes on the value of Services provided by them in Domestic Tariff Area, therefore, the party is liable to pay the amount of service tax on the value of services provided by them to the units situated at Kolkata and Baddi.

Secondly I have noticed that the party had received the amount (value of their services) in the name of Salary, other allowances, Normally, in such cases inter-unit debit notes are issued to amount for the case of goods (if any) and services supplied by one unit to other unit. But in the instant case, this fact was willfully suppressed by way of

receiving the said amount in the form of salary & other allowances. This clearly indicates that the unit (the party) was fully aware of the fact, that payment of service tax would become liable, if the amount received was shown as the value of services provided by them to their Kolkata and Baddi units.

Moreover it has also been noted that they had never intimated / disclosed this fact to the department that they are 100% EOU this fact came to the notice of the department, only when an audit was conducted in their unit.

From the above mentioned facts it can easily be understood that if the party would have discharged their service tax liability properly and correctly, there would have not been any accumulated amount of Cenvat Credit with the party and their no refund claim would have been filed by them.

Also one main issue is, as to whether the amount involved in this SCN had become time barred under the provision of Section 11B of the Central Excise Act, 1944, at the time of filing of refund by the party or not. The second issue is as to whether the party was eligible to take the cenvat credit (of the amount involved in this SCN) as the said services appear to be ineligible services under the provisions of Rule 2 (I) of the Cenvat Credit Rules, 2004 read with notification No 27/2012-CE (NT) dated 18.06.2012 as regards the limitation for filing the refund claim, it has been very clearly mentioned in Section 11B of C. Ex Act, 1944 the relevant date has also been defined for counting the period of one year. The party has also mentioned in their defence reply that "Relevant Date" means the date of making payment of service tax in relation to which application for refund is made. In this context it is pertinent to note that the party in their defence reply have not disclosed the date (s) of payment not have adduced any proof evidence therefore with respect to the disputed

amount. So, on this, basis, the period of one year cannot be determined and date of invoices/bills of the input services will be taken for computing the period of one year

Secondly, the party has also stated in their defence reply that as per the provisions of Notification No.27/2012 CE (NT) dated. 18.06.2012, the manufacture or the service provider of output service shall submit not more than one claim for every quarter. Therefore, the period of year should be counted from the last date of the quarter 30.06.2010 in this case. It is very pertinent to note here that the provisions of section 11 B ibid and that of notification No. 27/2012-CE(NT) dated. 8.06.2012 cannot be read in isolation, it is settled law that the rules or the notification cannot over side the provisions of basic Act. In fact, the Rules are referred or the Notifications are issued under the basic act. Therefore, the provision of Notification No.27/2012 CE(NT) dated 18.06.2012 should be read within the framework of section 11 ibid and not beyond that. Therefore, I come to the conclusion that the time limit should be in accordance with the provisions of section 11 ibid. in the instant case the time limit of one .year should be counted from the date of input service invoice(s).

Therefore, in view of the above discussion, I have come to the conclusion that:-

- 1. The party has willfully suppressed the vital facts from the department such as not disclosing their 100% EOU status and by receiving the value of the services provided to their Kolkata and Baddi units, in the name and form of salary & other allowance Just to evade the payment of service tax liable on such amount.*
- 2. The party has filed the refund claim of Rs. 3,02,757/- in contravention of the provisional of Rule 5 of the Cenvat Credit Rule 2004 read with Notification No. 5/2006- CE (NT) dated 14.03.2006,*

as there would have been no accumulated amount of Cenvat credit, if they had discharged their service tax liability properly.

- 3. The alleged amount of service Tax Rs, 3,02,757/- is demandable and recoverable from the party along with interest.*
- 4. Their refund claim amounting to Rs. 3,02,757/- is not admissible and liable to be rejected for the reason as discussed herein above."*

4.4 The entire case against the appellant is based on the fact that appellant had been recovering certain amounts as detailed in table below from their own units located in DTA, towards "salary and allowances"

Year	Salary Expense s on own DTA business	Total salary expenses as per B/Sheet	Staff used for export services	Export Sales	Notional sales to their own group companie s on the basis of salary expenses	Service Tax Liability
2008-09	910632 8	4811919 4	3901286 6	1366324 97	3189256 4	394192 1
2009-10	147242 19	5554478 1	4082056 2	1679990 92	6059827 0	624162 2
2010-11 (upto Nov.201 0)	127408 27	1077146 03	9497377 6	1460827 87	1959715 2	201850 7
TOTAL	365713 74	2113785 78	1748072 04	4507143 76	1120879 86	122020 50

Revenue holds the view that these amounts are towards the services provided by them to their units in DTA, and hence leviable to service tax. Secondly as appellant had not paid any service tax in respect of these services, the amounts claimed as refund of accumulated credit would not be admissible as the same would have been used for payment of service tax. Though I do not find any order passed, in the present case confirming the demand of service tax for Rs 1,22,02,050/- in terms of Section 73 (1) of the Finance Act, 1994. However in a novel manner the refund of accumulated cenvat credit has been rejected, for the reason of nonpayment of service tax on these amounts received by the appellant from their DTA units. Further

the demand in respect of the amount claimed as refund has been confirmed against the appellant and equal penalties imposed. Thus against the total amount of service tax of Rs 1,22,02,050/- which as per the show cause notice and order in original was not paid by the appellant the demand is made equivalent to the amount claimed as refund along with equivalent penalties. The details of the demands made is as indicated in table below:

Order-in-Original No.	Period Involved.	Amount in Rs	
		Service Tax	Penalty
R-294/DC/DIV- III/ST/NOIDA/2016-17	January 2010 to March 2010	3,44,879	3,44,879
R-295/DC/DIV- III/ST/NOIDA/2016-17	October 2009 to December 2009	3,02,757	3,02,757
R-296/DC/DIV- III/ST/NOIDA/2016-17	April 2010 to June 2010	7,18,402	7,18,402
R-293/DC/DIV- III/ST/NOIDA/2016-17	July 2010 to September 2010	20,32,043	20,32,043
		33,98,081	33,98,081

It is also interesting to note that instead of confirming the demand of the service tax, due adjudicating authority not only denied the refund claim mad under Rule 5 of CENVAT Credit Rules, 2004, but also denied the Cenvat Credit of the amount claimed as refund of accumulated ground for the reason that the same has not been utilized for payment of service tax due. This credit has been denied by invoking the provisions of Rule 14.

4.5 The manner in which the issue has been handled and decided by the lower authorities is not only unique but is totally alien to the legal provisions outlined by Finance Act, 1994 and the rules made there under. In case the revenue authorities were of the view that certain amount of tax due was not paid by the appellant, then the proper course would have been to confirm the demand under Section 73 of the Finance Act, 1994 and recover the amount so confirmed, from the amounts admissible as refund to the appellants by appropriating the same against amounts confirmed. It could have been adjusted against the amount available in the CENVAT credit as admissible credit. Non payment of some amounts towards due service tax liability cannot be reason for denial of CENVAT Credit or the refund under Rule 5. All operate under separate sphere and needs to be examined as per the parameters laid down as per law. I do not find any merits in the impugned order to this extent.

4.6 On the issue of limitation also i.e. do not find any merits in the impugned order in view of the decision of larger bench in

case of Span Infotech (India) Pvt Ltd. [2018 (12) GSTL 200 (T-LB)]] holding as follows:

"9. Rule 5 of the Cenvat Credit Rules, 2004 provides for refund of unutilized Cenvat credit, even after adjustment of the same for payment of duty of excise or service tax. The conditions, safeguards and limitations for consideration of such refund claims have been spelt out by the Government through notifications. Notification No. 5/2006 (up to 17-6-2012) and Notification No. 27/2012 (w.e.f. 18-6-2012) (as amended) has specified the conditions in this regard. These notifications specify that such refund claims are to be filed within the period specified in Section 11B. The relevant date specified under the above section leaves no room for doubt as far as export of goods is concerned. However as far as export of services is concerned, the various sub-sections specifying relevant date under Section 11B do not cover the case of export of services. Further, the exporters of services have been given the option to file claims for such refunds once in a quarter and in respect of 100% EOUs, once in a month. The issue referred to Larger Bench is whether the time limit prescribed under Section 11B in respect of filing of refund claims is to be applied from the date of receipt of payment for export of services or can be considered from the end of the quarter in which such payments have been received.

10. After considering the provisions of the notifications issued under Rule 5 of the CCR, we note that there is a specific condition that the refund claims are required to be filed within the period specified under Section 11B. Consequently, we are of the view that completely ignoring the provisions of Section 11B may not be appropriate. This view is supported by the decision of Hon'ble Madras High Court in the case of GTN Engineering (supra) wherein Hon'ble High Court has disagreed with the view expressed by Hon'ble Karnataka High Court in the case of mPortal

(supra) that Section 11B will have no application with respect to refund under Rule 5 of CCR.

11. *The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give its meaning such that the objective of the provisions; i.e. to grant refund of unutilized Cenvat credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Services Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh High Court has held that the date of receipt of consideration may be taken as relevant date in the case of Hyundai Motors [2015 (39) S.T.R. 984 (A.P.)].*

12. *The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra), has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.*

13. *Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No. 27/2012, w.e.f. 1-3-2016. Essentially, after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or*

liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis."

4.7 Hon'ble Karnataka High Court has in case of Suretex Prophylactics India Pvt. Ltd [2020 (373) E.L.T. 481 (Kar.)] held as follows:

"13. In the instant case, the appellant has obtained registration under the provisions of Finance Act, 1994 in the category of service provider as "scientific and technical consultancy services". As the entire taxable services rendered by the appellant for exporting outside India and on account of appellant not having any domestic service tax liability, the input service credit availed by it on the taxable input services, received by it remained unutilized. Hence, appellant sought for refund of this unutilized input credit under Rule 5 of CENVAT Credit Rules, 2004 by submitting 16 refund claims. Said applications came to be rejected as not having been filed within the limitation prescribed under Section 11B of the Central Excise Act. While answering substantial questions of law (1), (3) & (4) hereinabove, we have already held that provisions of Section 11B of Central Excise Act would be applicable though Section 11B of the Act does not cover refund of Cenvat credit, Notification No. 5/2006 makes it explicitly clear that for the purpose of relevant date for computing one year prescribed under Section 11B, it has to be determined by applying Rule 5 of Cenvat Credit Rules, 2004, necessarily the refund claims ought to have been filed within one year from the relevant date as specified in Section 11B. In other words, time-limit has to be computed from the last date of the last month of the

quarter which would be the relevant date for the purposes of examining if the claim is filed within the limitation prescribed under Section 11B or otherwise. The details of the refund claims in so far as it relates to 12 claims was on 3-1-2014 had been filed beyond one year from the last date of the last month of the quarters and as such, they were clearly time-barred. Insofar as remaining 4 claims, matter has been remanded to the original authority, against which there is no appeal by the revenue. Hence, we answer the substantial question of law No. 2 that Tribunal was right in holding that the "relevant date for computation of time-limit will be the end of the quarter" in which FIRC's are received as per the extant Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012."

4.8 As the demand made in the orders of the lower authorities is not sustainable, the penalty imposed also is set aside.

4.9 Thus I do not see any merits in the impugned order on any count.

5.1 Appeals are allowed.

(Pronounced in open court on-04 April, 2024)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp