

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70257 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-02-21-22 dated 07.04.2021 passed by Commissioner (Appeals) Central Excise & CGST, Noida)

M/s Pan Business Lists (P) Ltd.,
(E-31, Sector-8, Noida-201301)

.....Appellant

VERSUS

Commissioner Central Excise &

Service Tax, Noida

....Respondent

(E-5, Sector-1, Noida)

APPEARANCE:

Shri Suhail Ahmad, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70583/2024

DATE OF HEARING : 30 May, 2024
DATE OF PRONOUNCEMENT : 13 September, 2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. NOI-EXCUS-001-APP-02-2021-22 DT. 7.04.2021 of the Commissioner (Appeals), CGST, Noida. By the impugned order, appeal filed by the appellant against order in original No. R-41/AC/CGST/D-IV/Noida/2020-21 dated 21.09.2020 rejecting the refund of Rs. 6,11,681/- filed by the appellant has been dismissed.

2.1. Appellant was registered with erstwhile Service Tax department vide registration No. AAACP3957ASDOO1 and was engaged in providing taxable Service namely "Software Services" falling under Section 65 of the Finance Act, 1994. The appellant is 100% EOU registered under STPI registration

certificate of the Govt. of India and exported 100% of total services during the said period and was not in a position to utilize the tax paid on input services under RCM basis.

2.2 The appellant has filed the refund claim of Rs. 6,11,681/- on 20.09.2017 for the period October, 2016 to June, 2017 under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012- CE(NT) dated 18.06.2012. The appellant has filed refund in respect of unutilized Cenvat Credit of Service Tax as allowed and admissible to them under Rule 3 of the Cenvat Credit Rules, 2004, paid on Input Services used in the taxable services exported out of India according to the provisions of Rule 6A of Service Tax Rules, 1994 during the said period.

2.3. The refund claim filed by the appellant was scrutinized by the jurisdictional Division office and it was observed that;

- They had not filed the refund application in prescribed manner. As per Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012 the application should have been filed on quarterly basis, but the appellant had filed the application for a period of 9 months i.e. from October, 2016 to June, 2017 in a single application.
- They had mentioned Rs.6,11,681/- of Cenvat Credit taken on inputs and input service during the said period in S.No. 3 in the Form 'A' in their refund application however as per the ST-3 returns, a statutory record, it had been shown as zero in the respective column of ST-3 return
- They have shown the amount of Cenvat Credit of Rs.6,11,681/- lying unutilized as on the date of submission of refund application against S.No. 13 in the Form 'A' which also did not appear correct as the amount claimed by the appellant as refund had not been debited in Cenvat Credit Account.
- they had not shown the figure of export turnover in their ST- 3 returns, a statutory record, filed during the said period.

- they had claimed refund Of 'Service Tax paid on RCM basis on 'Management or business consultant service', however, upon scrutiny of the returns of the appellant it had been noticed that appellant had mentioned "No" in the column No. A10.3[A Service provider under partial reverse charge under proviso to Section Section 68(2)].

2.4 A show cause notice dated 25.10.2018 was issued to the appellant asking them to show cause as to why their refund claim should be rejected.

2.5 Show cause notice was adjudicated as per the order in original referred in para 1 above, rejecting the refund claim made. Aggrieved appellant filed appeal before the first appellate authority which has been dismissed as per the impugned order.

2.6 Aggrieved appellant have filed this appeal

3.1 Have heard Shri Suhail Ahmad, Advocate for the appellant and Shri Santosh Kumar, Authorized representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Impugned order arbitrarily and unreasonably rejects the entire refund claim of Rs.6,11,681/- without keeping in mind the related facts as stated in the show cause notice.
- The claim of refund has been rejected based on the interpretation of clause 2(h) of the notification number 27/2012-CE(N.T.) dated 18/06/2012 stating that allowing the refund would lead to double benefit to the appellant
- the time frame for claiming refund for service exporters is before the expiry of one year and our claim falls squarely within that period. Hence the refund cannot be denied on this basis of this notice as quarterly return are prescribed for manufacturers only and not for service exporters as the Appellant is an 100% EOU and registered with STPI and the entire sales of the Appellant company are Exports

Hence the refund cannot be rejected but this fact has been accepted by the department.

- Appellant has shown the amount of Cenvat Credit of Rs. 6,11,681/ as lying unutilized on the date of submission of refund application against SI. No. 13 in the Form 'A' which does also not appear correct as the amount claimed by the party as refund, has not been debited in Cenvat Credit Account. The amount has not been debited as well as the Appellant does not have any taxable services where this credit can be utilized and the Appellant has filed a claim as it is appropriate to claim the refund as the company cannot avail the benefit of tax in its regular course of business. Reliance is placed on decisions in case of
 - Global Analytics India (P.) Ltd. [[2019] 108 taxmann.com 330 (Chennai-CESTAT)] .
 - Fine Automotive and Industrial Radiators (P.) Ltd. [Final Order No. 41396 of 2019, dated 20-11-2019].
 - Zamil Steel Engineering India (P.) Ltd. [[2020] 116 taxmann.com 889 (Chennai - CESTAT)]
 - JMT Consultant Detailing (P.) Ltd. [[2020] 113 taxmann.com 220 (Bangalore - CESTAT)]
 - Morning Star India (P) Ltd. [Final Order No A/55267/2013-SM dated 31.08.2017]
 - Indo Tooling Pvt Ltd. [Final Order No 50263/2022 dated 09.03.2022]
- Authorities ignored the earlier orders passed by the cestat allahabad in the case of the appellant regarding the refund of service tax paid by the appellant on the services rendered for export of services. (CESTAT Allahabad final order no A70897-70898/2019-SM[BR] dated 26.04.2019)
- No unjust enrichment as burden of tax has been borne by the appellant

- The law is settled that the state is entitled to tax what is legitimately due to it.
 - ITC Limited [1993 (67) E.L.T. 3 (S.C)]
 - Natraj and Venkat Associates [2010 (17) S.T.R. 3 (Mad.)]
 - Kirloskar Electric Co. Ltd. [83 STC 485].
 - K.V.R.Constructions [2010 (17) S.T.R.6 (Kar)]
- The Appellant is entitle to refund of Rs.611681/-even as per constitutional mandate

3.3 Arguing for revenue learned authorized representative while reiterating the findings recorded in the impugned order submits that:

- Adjudicating authority as well as the first appellant authority observed that the appellant not debited the amount which was required as per the said notification before filing of the refund application, hence, the refund was not admissible to the appellant and accordingly rejected the refund.
- the appellant was required to debit their CENVAT Credit account, equal to the refund amount, but he failed to do so.
- After introduction of the GST, ample opportunity was available to the taxpayers to file the ST-3 returns and also to revise the same. However, the appellant has neither shown the CENVAT Credit taken in their ST-3 returns nor bothered to revise the returns during the opportunity provided to revise returns.
- as per Para 2 (h) of the notification no. 27/2012-CE (NT) dated 18.06.2012, it was a mandatory condition for filing of refund claim that the appellant shall debit an amount equal to the refund from their CENVAT Credit account at the time of making the refund claim and the same fact is also emerging from the Sr. No. 15 of the FORM prescribed for refund under the said notification which stipulates as

"Amount debited from the CENVAT account [shall be equal to the Amount claimed as refund (14)]".

- appellant had shown the credit Nil in their ST-3 Return. As no credit was available, no debit was made and thus, they contravened the conditions and limitations as prescribed for refund in the said notification.
- the case M/s. Morning Star India (P) Ltd. relied upon by the appellant during the course of hearing, the matter was related to the refund under Rule 5 of the CCR, 2004 read with Notification No. 05/2006 wherein no such condition of debiting the credit at the time of filing of the refund was there, however, in the present case, the appellant filed refund under Rule 5 of the CCR, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012 wherein debiting of the amount equal to refund claim from the CENVAT Credit Account is a mandatory condition for claiming the refund. Hence, the case relied upon by the appellant would not be applicable in the present case.

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

4.2 Impugned order records as follows for holding against the appellant:

6.The only allegation on the basis of which, the refund claim was rejected was the appellant has not debited the claimed amount of Cenvat credit. The adjudicating authority observed that in terms of Sr. No. 2(h) of the Notification No. 27/2012-CE (N.T) dated 18.06.2012, it is clear that the amount that is claimed as refund under Rule 5 of the said rules shall be debited by the claimant from his Cenvat credit account at the time of making of claim. The adjudicating authority has observed that from the submissions made by the appellant, it is clear that they still have not debited the claimed amount in their Cenvat Credit amount, which is not in consonance with the above mentioned clause 2(h) of the Notification.

6.1. *I find that in this regard, the appellant has submitted that during the period when the refund claim was filed, there was no existence of portal for the appellant to file ST-3 returns. Since it was not possible for the appellant to file ST-3 returns showing the debit of the refund amount, they did not carry forward the refund amount to the GST TRAN-1 and thereafter filed refund claim. The department does not have a case that the appellant is not eligible for the refund. However the same is only rejected by technical reasons stating that appellant has not debited the Cenvat Credit for claiming the refund. The main fact is that the Aces portal had been stopped and there was no other alternative for the Appellant except to file for the refund. The appellant further submitted that during the period in dispute, GST was introduced and hence, it was the migration/transition by the introduction of which filing of Service Tax return (ST-3) was done away with and hence, there was no way the appellant could debit and reflect the same in its ST-3 return. The condition at paragraph 2(h) of Notification No. 27/2012 (Supra) was applicable only during the period prior to the GT regime since GST has done away with the filing of ST-3 return. There was no provision in ACES system to debit the value of refund claim in the CENVAT balance during the relevant period. There being no service tax return required to be filed hence it was claimed as refund.*

6.2.1 *I have considered the both arguments and perused the records. The Constitution of India has demarcated the roles of Legislature, Executive and Judiciary. Legislation is the exclusive domain of the Legislature. To provide flexibility in the law to deal with changing needs and conditions, the parent Act itself delegates the powers of delegated legislation to the Executive i.e. the Government which is accountable to the Parliament This delegated legislation, in the form of Rules, Regulations, Notifications, etc., is subject to the control of the*

Parliament. Every Gazette Notification with the Rules, Regulations, Notifications, etc., is placed before the Parliament and is scrutinised by the Parliamentary Committee on Subordinate Legislation and where, it feels, necessary, modified. Thus, it is clear that:

- a) The legislation is the exclusive privilege of the Legislature;*
- b) When the legislature delegates powers to make Rules, Regulations, issue notifications, etc., such delegation is done to the Government which is answerable to the Legislature any and*
- c) All delegated legislations are, through a well laid down process, placed before the legislature and scrutinised by it and where it feels necessary, amended as per its directions.*

6.2.2. Of course, High Courts and Supreme Court who have the mandate to interpret the Constitution, review the legislation for its- constitutionality, etc., which is another additional check on the legislation. However, neither the officers enforcing the law nor the quasi-judicial authorities including the Tribunals (which are creations of the law) have the power to modify, amend, insert, delete, stretch or restrict the scope of the Act, Rules, Regulations or the Notifications. Their role is confined to interpreting the laws and applying them to the case in hand. The Hon'ble Apex Court in the case of UOI vs Kirloskar Pneumatics Company [1996 (84) ELT 401 (SC)] not only clarified this position but further held that even when exercising the powers under Article 226/227, the High Courts cannot direct the officers to act contrary to the law. Para 10 of this judgment reads as follows:

"10. According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of S Section 27 which inter alia includes the period of limitation-mentioned therein. Mr. Hidayatullah submitted that the period of limitation

prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. Learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law."

6.2.3 The above scheme of things under the constitution as well as the above judgment of the Supreme Court that the creatures of law cannot act contrary to the law lays down

the basic framework for me to decide the issue at hand. The question to be decided is whether the Order-in-Original is as per the statutory provisions or not. Rule 5 of the CENVAT Credit Rules, and the Notification No. 27/2012 dated 18.06.2012 -- CE (NT) prescribing the conditions, limitations and safeguards. I find that 2(h) of the notification says that the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

6.2.4 In view of the above, I am not in agreement with the submissions made by the appellant. It is matter of fact that the provisions of Sr. No. 2(h) of the Notification No. 27/2012 dated 18.06.2012 were applicable in normal circumstances i.e. at the time of existence of Service Tax Regime. It is very clear from the provisions that the appellant was required to debit the cenvat credit amount at the time of making the application of the refund claim. After, introduction of GST w.e.f 01.07.2017, there was a transition phase during which there was option available with the taxpayer to file Tran-1 to carry forward their Cenvat Credit to be utilized for future payment of GST. This option was made available for the taxpayers even after introduction of GST and taken away only after a lapse of considerable period of time. I find that in the instant case the refund claim was filed by the appellant on 20.09.2017 for the period October 2016 to June 2017 i.e. after the introduction of GST. At the time, the option was very well available on ACES Portal and the appellant was required to debit the amount in ST-3 returns, but the appellant did not do so. I find that the case laws relied upon by the appellant are not applicable in their case. Facts and circumstances in their case are entirely different from their case. I find that the appellant has made omissions on two occasions, first by not debiting the Cenvat credit amount in their ST-3 returns as discussed by the adjudicating authority and second, by

not filing Tran-1 with the GST department for carrying forward their Cenvat Credit balance.

Thus, I am not inclined to-give the benefit of above said case laws to the appellant and dismiss the appeal filed by the appellant.

4.3 Order in original records as follows for rejecting the refund claim filed by the appellant:

3.4 With regards to the third issue which related to debit of the claimed amount of refund Rs. 6,11,681/- in their Cenvat credit account, the party has submitted that the amount would be debited after filing the claim of refund and the claim is sanctioned by the department. Further, they have submitted that the amount has not been debited as well as that the assessee does not have any taxable services where this credit can be utilized. The assessee has filed a claim as it is appropriate to claim the refund as the company cannot avail the benefit of tax in its regular course of business. In this regard, I find that the statutory position is very clear in terms of the S.No.2(h) of the Notification No. 27/2012-CE(N.T) dated 18.06.2012, wherein it is stated that the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his Cenvat Credit account at the time of making the claim. From the submission made by the party, it is clear that they still have not debited the claimed amount in their Cenvat Credit amount, which is not in consonance with the above-mentioned clause 2(h) of the notification No. 27/2012-CE(NT) dated 18.06.2012. Therefore, the allegation in the show- cause-notice is sustainable and the refund claim is liable for rejection.

....

3.7 In view of the above, I find that all the allegations except the debit of the refund amount of Rs. 6,11,681/- in their Cenvat Credit account are not sustainable, but the non-debit of the claimed amount would render the claim

liable to rejection on grounds of non-compliance of stipulation of debit of amount that is claimed as refund under rule 5 of the said rules from his Cenvat Credit account at the time of making the claim. The statutory position is very clear in terms of the S.No.2(h) of the Notification No. 27 /2012-CE(N.T) dated 18.06.2012 Granting refund without debit in the cenvat credit account would also lead to double benefit, therefore, refund claim of Rs. 6,11,681/- (Rupees Six Lakh Eleven Thousan Six Hundred Eighty One Only), is inadmissible and liable to be rejected in terms of clause 2(h) of the Notification No. 27/2012-CE(N.T) dated 18.06.2012 as amended.

4.4 Rule 5 of CENVAT Credit Rule was substituted vide Notification No dated to read as follows:

5. Refund of CENVAT Credit. –

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

Refund amount =

*(Export turnover of goods + Export turnover of services) x Net CENVAT credit /
Total turnover*

Where,-

(A) —Refund amount means the maximum refund that is admissible;

(B) —Net CENVAT credit means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) —Export turnover of goods means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) —Export turnover of services means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) Total turnover means sum total of the value of –

- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of subrule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of

drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax.

Explanation 1.- For the purposes of this rule,-

- (1) —export service means a service which is provided as per the provisions of Export of Services Rules, 2005, whether the payment is received or not;*
- (2) —relevant period means the period for which the claim is filed.*

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

4.5 Rule 5 authorized the Board to prescribe the conditions and safeguards implementation of the Refund Scheme as per. Notification No. 27/2012-CE (NT), dated 18-6-2012 as amended by Notification no. 14/2016-C.E.(N.T.), dated 1-3-2016 provided such conditions and safeguards and read as follows:

1. In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules"), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 5/2006-Central Excise (N.T.), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, section 3, sub-section () vide number G.S.R. 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

2.0 Safeguards, conditions and limitations. –

Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely :-

- (a) The manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter Provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.*
- (b) In this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.*
- (c) The value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.*
- (d) The total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant*
- (e) In respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules*
- (f) For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.*
- (g) The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less*

- (h) *The amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.*
- (i) *In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.*

3.0 Procedure for filing the refund claim.

- (a) *The manufacturer or provider of output service, as the case may be, shall submit an application in Form A (See Division Two) annexed to the notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-*
 - (i) *the factory from which the final products are exported is situated;*
 - (ii) *the registered premises of the provider of service from which output services are exported is situated.*
- (b) *The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under:*
 - (i) *in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);*
 - (ii) *in case of service provider, before the expiry of one year from the date of-*
 - a. *receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or*
 - b. *issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.*
- (c) *The application for the refund should be signed by-*

- (i) *the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;*
 - (ii) *any partner in case of a partnership firm;*
 - (iii) *a person authorized by the Board of Directors in case of a limited company;*
 - (iv) *in other cases, a person authorized to sign the refund application by the entity.*
- (d) *The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.*
- (e) *The refund claim shall be accompanied by a certificate in Annexure A-I, (Form A - See Division Two) duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.*
- (f) *The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim*
- (g) *At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be."*

4.6 From the reading of the above Rule 5 and Notification it is evident that Rule 5, authorized the Board to prescribe the safeguards conditions and limitations to check the misuse of the provisions contained in the said Rule. In exercise of the powers conferred under the said Rule, Board has issued this notification prescribing the conditions and safeguard. The prescriptions which are put under the category of "conditions and safeguards"

cannot be termed as mere procedural, because the same notification prescribes the procedural requirements also. As per condition and safeguard – (h) it is mandatory that the appellant should have debited the amount claimed as refund under the said Rule from the CENVAT Credit Account and subscribes to a declaration of truth, in making the said debit entry, before the refund claim is filed. In the present case appellant has filed this refund claim without making any debit entries in the CENVAT account.

4.7 We have constantly held that the refund claim under Rule 5 cannot be modified or rejected on the account of inadmissibility of the credit and without initiation of the proceeding under Rule 14 of the CENVAT Credit Rules, 2004. In his ST-3 return the appellant makes the claim to CENVAT Credit and thus revenue authorities get opportunity to determine with regards to admissibility of the said CENVAT credit and initiate proceedings under Rule 14, for denial of such credit. Interestingly in the present case appellant has neither reflected this amount claimed as CENVAT Credit claimed in their ST-3 return and have neither debited this amount from the available balance. The refund claim has been made denying the opportunity to the revenue authorities from verifying the genuineness of the claim made vis a vis the admissible CENVAT Credit. It would be totally erroneous to hold that the condition and safeguard prescribed at (h) was merely procedural infraction in the present case.

4.8 In case of Indian Aluminium Company Ltd [1991 (55) E.L.T. 454 (S.C.)] Hon'ble Supreme Court observed:

4. Shri Ganesh, learned Counsel for the petitioner Company relied on the judgment of this Court in Kirpal Singh Duggal v. Municipal Board, Ghaziabad (1968) 3 SCR 551. in support of his submission that the non-fulfilment of procedural requirement does not bar the claimant from pursuing his remedy in a court of law. That was a case where the appellant entered into a contract and supplied the goods to the Government. The Municipal Board

collected toll when the trucks were passing through the toll barrier. The appellant obtained a certificate that the transported goods were meant for Government work. The appellant claimed exemption on the basis of the certificate but not within time. The Court observed thus :

"But Counsel for the respondent contended that the rules framed by the Government regarding the procedure constituted a condition precedent to the exercise of the right to claim refund and recourse to the Civil Court being conditionally strict compliance with the procedure prescribed the Civil Court was incompetent to decree the suit unless the condition was fulfilled. We are unable to agree with that contention. The rules framed by the Government merely set up the procedure to be followed in preferring an application to the Municipality for obtaining refund of the tax paid. The Municipality is under a statutory obligation once the procedure followed is fulfilled, to grant refund of the toll. The application for refund of the toll must be made within fifteen days from the date of payment of the toll. It has to be accompanied by the original receipts. If these procedural requirements are not fulfilled, the Municipality may decline to refund the toll and relegate the claimant to a suit. It would then be open to the party claiming a refund to seek the assistance of the Court, and to prove by evidence which is in law admissible that the goods transported by him fell within the order issued under Section 157(3) of the Act. The rules framed by the Government relating to the procedure to be followed in giving effect to the exemptions on April 15, 1939, do not purport to bar the jurisdiction of the Civil Court if the procedure is not followed."

Relying on these observations, Shri Ganesh, learned Counsel for the petitioner Company contended that in the instant case though the procedural requirement is not fulfilled by filing a declaration in Form 14, still that is not a

bar to invoke the jurisdiction of the Civil Court or the High Court by way of a writ and seek a refund. We are unable to agree. In Duggal's case, (1968) 3 SCR 551 the appellant, as a matter of fact, obtained certificate but failed to make the application for refund within time. It is in that context this Court observed that the Municipality was under a statutory obligation once the procedure followed is fulfilled and if it is not fulfilled the Municipality may decline. The granting of a certificate that the appellant used the goods for Government work made all the difference. But, in the instant case, the non-fulfilment of the requirement even though procedural, has disentitled the petitioner Company because there was no way to verify whether it was entitled for such concession. In HMM Limited and Another v. Administrator, Bangalore City Corporation and Another no doubt the view taken in Duggal's case was confirmed but it does not made any difference so far as the present case is concerned for the reasons stated above. In that case the question was whether the goods namely Horlicks was consumed within the city or not and there was no dispute as to the quantum which was credited pursuant to the directions of the High Court. Hence no further verification was necessary. Therefore these two cases are distinguishable.

5. However, a concession has to be availed at the time when it was available and in the manner prescribed. The common dictionary meaning of the word "concession" is "the act of yielding or conceding as to a demand or argument, something conceded; usually implying a demand, claim, or request, "a thing yielded", "a grant". In the Dictionary of English Law by Earl Jowitt, the meaning of "concession" is given as under :

"Concession, a grant by a central or local public authority to a private person or private persons for the utilisation or working of lands, an industry, a railway waterworks, etc."

6. The expressions "rebate" and "concession" in the commercial parlance have the same concept. In Halsbury's Laws of England, 4th Edn. Para 198 it is observed as under :

"Application for rebate. - When a rating authority receives an application for a rebate it has a duty to determine whether the residential occupier is entitled to a rebate and, if so, the amount to which he is entitled; and it must request him in writing to furnish such information and evidence as it may reasonably require as to the persons who reside in the hereditament, his income, and the income of his spouse. Unless the rating authority is satisfied that the residential occupier has furnished all the information and evidence it requires, it is under no duty to grant a rebate." (emphasis supplied)

7. In *Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta and Ors.* the appellant which was a Public Limited Company, sought exemption under the provisions of the Bengal Finance (Sales Tax) Act, 1941 in respect of certain sales but did not produce before the Officer the declaration forms from the purchaser dealers required to be produced under the proviso to that sub-clause granting exemption. It was contended on behalf of the appellant that proviso to the sub-clause was only directory and the dealer is not precluded where the proviso is not strictly complied with from producing other relevant evidence to prove that the sales were for the purposes mentioned in the said sub-clause. The contention on behalf of the respondent was that the dealer can claim exemption under the sub-clause but he must comply strictly with the conditions under which the exemption can be granted. Rejecting the appellant's contention, this Court held thus :

"Section 5(2)(a)(ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the

exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub-clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form."

It was further held as under :

"There is an understandable reason for the stringency of the provisions. The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well-nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two-fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clauses seek to avoid."

It can thus be seen that the submission namely that the dealer, even without filing a declaration, can later prove his case by producing other evidence, is also rejected. This ratio applies on all fours to the case before us. As already mentioned the concession can be granted only if the raw material is used in the industrial undertaking seeking such concession. For that a verification was necessary and that is

why in the rule itself it is mentioned that a declaration has to be filed in Form 14 facilitating verification. Failure to file the same would automatically disentitle the Company from claiming any such concession.

8. In any event the petitioner Company cannot claim concession at this distance as a matter of right. In Orissa Cement Ltd. v. State of Orissa & Ors AIR 1991 SC 1676 it was observed thus :

"We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice."

In the instant case the octroi duty paid by the petitioner Company would naturally have been passed on to the consumers. Therefore there is no justification to claim the same at this distance of time and the Court in its discretion can reject the same. For the above reasons, this Special Leave Petition is dismissed with costs.

4.9 In case of Mihir Textiles Ltd. [1997 (92) E.L.T. 9 (S.C.)] Hon'ble Supreme Court has observed as follows:

11. Learned counsel for the appellant raised an alternative contention that the deficiency in the contract for obtaining the concessions should not have been taken so seriously and the Customs Authorities should have granted the reliefs as the appellants had performed their part in complying with the conditions. Non-compliance of the conditions,

according to the counsel, was only due to the lapses on the part of the authorities concerned. This contention was expatiated to the extent that the conditions prescribed in the proviso to entry No. 84.66 are merely directory and not mandatory. According to the counsel, the conditions prescribed, if interpreted strictly, would result in the denial of concessional reliefs which statute has conferred on the citizen.

12. In support of that contention, counsel invited our attention to the decision of a Constitution Bench of this Court in State of U.P. v. Manbodhan Lal Srivastava, 1958 SCR 533, wherein their Lordships were considering the implication of non-compliance with the conditions provided in Article 320(3) of the Constitution on an order imposing punishment to a Government servant without reference to the Public Service Commission. While considering that question learned Judges made a reference to the Privy Council decision in Montreal Street Railway Company v. Normandin - AIR 1917 PC 142 and the Federal Court decision in Biswanath Khemka v. Emperor - AIR 1945 FC 67. The Constitution Bench held that the provisions of Article 320(3) are not mandatory and non-compliance of those provisions does not afford any cause of action in a court of law. Privy Council in the above quoted decision has observed that the question whether provisions in a statute are directory or imperative depends upon the object of the statute and no general rule can be laid down. "When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory." This is not a case where a certain provision is mandatory or directory. Here the question is whether concessional relief of

duty which is made dependent on the satisfaction of certain conditions can be granted without compliance of such conditions. No matter even if the conditions are only directory.

13. In Formica India Division v. Collector of Central Excise, 1995 (77) E.L.T. 511 (SC), non-compliance with Rule 56A of the Central Excise Rules, 1944 was held to be insufficient to deny the benefit of a notification to the assessee. But the said benefit was afforded on the special circumstances of a case as could be seen from the following words :

"The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to the captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A."

Nor can we find support from the ratio in B.O.I. Finance Ltd. v. The Custodian & Others, JT 1997 (4) 15, that "infringements of the instructions issued by the Reserve Bank of India under the Banking Regulations Act prohibiting the banks from entering into buy-back arrangements do not invalidate such contracts entered into between the banks and its customers", as it involved a question of invalidation of the contract. Here neither the contract nor the import is invalid or illegal and the question is only whether the importer is entitled to the concessional duty."

4.10 In case of Hindustan Zinc [2014 (300) E.L.T. 3 (Raj.)] Hon'ble Rajasthan High Court has held as follows:

15. On the other hand, the decision of Hon'ble Supreme Court in the case of Indian Aluminium Co. Ltd. v. Thane Municipal Corporation : 1991 (55) E.L.T. 454 (S.C.) would

be more appropriate; in that case to avail of the concessional rate of octroi, importers were required to make declaration in prescribed form to the effect that the goods imported shall not be used for any other purpose for sale or otherwise, etc. Thus an incentive was sought to be given to such entrepreneurs by such concession if the raw material which is imported is also utilised in the industrial undertaking without selling or disposing of otherwise. This being the object, a verification at the relevant time by the octroi authorities becomes very much necessary before a concession could be given. Since the company in that case which had imported the goods within the Municipal Limit had failed to fulfil the obligation of filing the requisite declaration, the Supreme Court held that it cannot turn-around and ask the authorities to make verification of record. The Supreme Court further observed that the verification at the time when the raw material was there is entirely different from a verification at a belated stage after it has ceased to be there. The Supreme Court further observed that the failure to file the necessary declaration would disentitle the company from claiming any such concession.

4.11 Certain observations made by the Hon'ble Apex Court in case of Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)] would also go in favour of holding that it is for appellant to show that they have complied with the conditions and safeguards as prescribed by the Notification No 27/2012-CE (NT) (as amended), and in absence of such compliance refund claim has been rightly rejected by the lower authorities. The relevant excerpts are reproduced below:

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted

strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

42. In Govind Saran Ganga Saran v. Commissioner of Sales Tax, 1985 Supp (SCC) 205, this Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See Mathuram Agrawal v. State of Madhya Pradesh, (1999) 8 SCC 667; Indian Banks' Association v. Devkala Consultancy Service, (2004) 4 JT 587 = AIR 2004 SC 2615; and Consumer Online Foundation v. Union of India, (2011) 5 SCC 360.].

43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as

may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.

44. In Hansraj Gordhandas case (supra), the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.

45. In Parle Exports case (supra), a Bench of two-Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows :

"How then should the Courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India, 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also Kailash Nath v. State of U.P., AIR 1957 SC 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage v. Frederick Wilkinson, (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language

employed. It must, however, be borne in mind that absurd results of construction should be avoided."

In the above passage, no doubt this Court observed that "when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document". This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in Wood Papers Ltd. case (supra). In para 6, it was observed as follows :

"... In Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."

46. The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the

exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case (supra) deduced as follows :

"Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally".

47. *We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case (supra).*

48. *The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.*

49. *The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :*

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union

of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."

51. In Hari Chand case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an

exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

4.12 In view of the discussions as above I do not find much merits in the submissions made by the appellant on the basis of the decisions relied upon. Relying upon the decision of Hon'ble Supreme Court in case Jagjit Singh [J.T. 1995 (1) S.C. 445] Hon'ble Allahabad High Court has in case of Super Cassettes Industries [1997 (94) E.L.T. 302 (All.)] held as follows:

"8. Learned counsel for the petitioner contended that in several cases the Tribunal has taken the view that since in Rule 57G there is no provision for reversal of a credit once taken by a manufacturer the dealer was not legally obliged to reverse the credit already taken by it by making debit entries in the PLA account. I was informed that apart from some judgments passed by CEGAT no High Court has yet dealt with the controversy. The mere fact that the CEGAT has accepted the claim for refund in some other cases cannot be a ground for taking the view that the credit taken by the petitioner was correct and its reversal was illegal and Article 14 cannot be invoked by the petitioner for claiming equality [See Chandigarh Administration v. Jagjeet Singh J.T. [1995 (1) S.C. 445]."

5.1 Appeal is dismissed.

(Order pronounced in open court on-13/09/2024)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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