

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70628 of 2024

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-432-20-21 dated 10.07.2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Cyber Group India Pvt. Ltd.,

.....Appellant

(30/1, Knowledge Park-III,
Greater Noida-201308)

VERSUS

**Commissioner of Central Excise &
CGST, Noida-II**

....Respondent

(Gautam Buddha Nagar)

APPEARANCE:

Shri Nishant Mishra, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70079/2025

DATE OF HEARING : 02.01.2025
DATE OF PRONOUNCEMENT : 18.02.2025

By means of the aforesaid appeal, the Appellant has challenged Order-in-Appeal No. NOI-EXCUS-002-APP-432-20-21 dated 10.07.2020 passed by Commissioner (Appeals) CGST, Noida, by which the rejection of refund claim of accumulated Cenvat Credit of Rs.19,79,328/- vide Order-in-Original dated 20.02.2019 has been upheld and rejection of refund claim has been affirmed.

2. Briefly stated, the facts of the case are such that during the relevant period, the Appellant was engaged in providing Information Technology services to its clients located outside India. The Appellant was availing CENVAT credit on input services used for providing output services. While furnishing ST-3 return for the period from April'15 to Sep'15, the Appellant could not disclose the amount of CENVAT credit in the return.

The Appellant claims that the said mistake was realised only after expiry of the time provided for revising the return and in these circumstances a letter dated 13.05.2016 was submitted on 18.05.2016 as a corrigendum to the ST-3 return disclosing the opening balance of CENVAT credit, credit availed and closing balance of CENVAT credit. It is the case of the Appellant that since the time period for revising return for the subsequent period i.e. October'2015 to March'2016 had not expired, hence the Appellant revised the ST-3 return for the said period disclosing the correct figures of opening balance of CENVAT credit, credit availed and closing balance of CENVAT credit. The Appellant further claims that since the services provided qualified as export of services, hence on 20.05.2016 the Appellant filed claim for refund of accumulated credit of Rs.19,79,328/- for the period April'2015 to June'2015. Along with the refund claim, the Appellant also submitted certificate issued by the Chartered Accountant.

3. A Show Cause Notice¹ dated 11.08.2016 was then issued proposing to reject the refund claim on the ground that since opening balance in ST-3 return for the period April'2015 to September'2015 was 'Nil', hence credit was never availed in returns and consequently there is no question of refund. The show cause notice also raised the issue of taking CENVAT credit after a period of one year.

4. The SCN was replied by the Appellant by relying on the corrigendum to ST-3 return disclosing the figures of CENVAT credit, carrying forward the said amount of CENVAT credit to the subsequent period and disclosing the same in ST-3 return for the said period i.e. October'2015 to March'2016 and that all invoices were issued within a period of one year of the date of claiming credit, which was demonstrated by the Appellant with the help of a table made in the reply. The reply also referred to one letter No. C. No. V(30) Ref/R-23/D-V/CYBER/16/46/1438 dated 24.05.2016 regarding verification of original invoices along with FIRC/BRC, Ledger Accounts, Bank Accounts etc.

¹ SCN

5. The SCN was adjudicated vide Order-in-Original dated 29.02.2019 rejecting the refund claim on the ground that opening balance in ST-3 return for the period April'2015 to September'2015 was 'Nil', hence credit was never availed in returns and consequently there is no question of refund. The order also records that since as per ST-3, no amount of credit was credited, hence no amount of credit can be said to be taken within a period of one year. The certificate of the Chartered Accountant was also not accepted on this ground.

6. By the impugned Order-in-Appeal, the appeal has been rejected and the adjudication order has been confirmed on the ground that the Appellant has not revised ST-3 return for the period April'2015 to Sep'2015 within the period provided under Rule 7B of the Rules, the corrigendum letter was filed before two days of filing the refund claim and that the return for the subsequent period Oct'2015 to March'2016 initially filed on 12.04.2016 was revised on 28.05.2016 i.e. after filing of refund claim on 20.05.2016. The order also records that in terms of clause 2(g) of Notification No.27/2012-C.E dated 18.06.2012, refund can be filed at the end of the quarter if CENVAT credit is lying in balance at the end of the quarter and in the instant case no CENVAT credit was lying in the CREDIT account during the period April'2015 to June'2015.

7. Aggrieved with the impugned order, the Appellant has preferred the present appeal. We have heard Id. counsel for the Appellant Shri Nishant Mishra and also Id. A.R. for the Revenue.

8. Id. counsel for the Appellant has made the following submissions:-

- (i) CENVAT credit was duly availed in the account books, which fact has not been disputed by the lower authorities;
- (ii) ST-3 return has been prescribed under the Service Tax Rules, 1994 and not under the CENVAT Credit Rules, 2004 and mere non-disclosure of opening and closing balance in ST-3 return cannot lead to the presumption that CENVAT credit was not availed by the Appellant;

- (iii) Non-disclosure of credit balances in the ST-3 return for the period April'2015 to Sep'2015 was a *bona fide* mistake, which was rectified by the appellant immediately when the Appellant became aware of the same, by filing corrigendum on 18.05.2016, as time-period for revision of return had expired and also that the Appellant revised return for the subsequent period Oct'2015 to March'2016 disclosing the correct balances;
- (iv) Having not objected to the corrigendum and revised return for the subsequent period, the Revenue cannot be allowed to contend that the correct balances were not disclosed by the Appellant;
- (v) The Appellant in its reply to show cause notice and its memo of appeal before Commissioner (Appeals) has demonstrated that the credit was availed within a period of one year from the date of claiming refund and finding to the contrary is based not on the basis of date of claiming credit in account books but only on the basis that the credit was not disclosed in the ST-3 return for the period April'2015 to Sep'2015.

The Id. counsel for the Appellant has also relied on certain decisions, which shall be referred to in the later part of this decision.

9. Ld. Authorized Representative for the revenue has reiterated the findings recorded in the impugned order and has also submitted that since the return for the subsequent period was revised after filing of refund claim, hence the CENVAT credit as per ST-3 return stood 'Nil' on the date of filing of refund claim. The Ld. A.R. therefore submitted that the appeal lack merits and is liable to be rejected.

10. Having considered the submissions made and perused the appeal record. The adjudicating authority has rejected the refund claim primarily on the ground that as per ST-3 return for the period April'2015 to Sep'2015 the CENVAT credit disclosed was 'Nil', hence no CENVAT credit was taken by the Appellant and

consequently there cannot be any question for refund of such credit.

11. Apparently, the refund claim was filed by the Appellant in terms of Rule 5 of the CENVAT Credit Rules, 2004² and sub-rule (1) of Rule 5 provides that refund of CENVAT credit shall be allowed subject to procedure, safeguards, conditions and limitations as may be specified by the Board by notification in the Official Gazette. A perusal of Rule 5 nowhere indicates that the same provides disclosure of balances of CENVAT credit in ST-3 return as the condition precedent for claiming refund of credit. There is nothing in Rule 5 to assume that if credit was validly availed but not disclosed in ST-3 return, the same would prohibit the refund of credit.

12. In exercise of powers conferred under Rule 5(1), Notification No.27/2012-CE(N.T.) dated 18.06.2012 has been issued specifying the safeguards, conditions and limitations and also the procedure for filing the refund claim. While paragraph 2 of the notification specifies the safeguards, conditions and limitations for claiming refund, the procedure for claiming refund has been specified under paragraph 3. On perusing the safeguards, conditions and limitations specified in paragraph 2, I find that there is nothing in the said safeguards, conditions and limitations so as to make disclosure of CENVAT credit balances in ST-3 return as a condition precedent for claiming refund. The procedure specified in paragraph 3 of the notification also merely specifies the procedure and the documents to be enclosed along with refund claim and nowhere requires disclosure of credit in ST-3 return.

13. So far as clause 2(g) relied in the impugned order, the same is reproduced hereunder:-

(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 refund claim, whichever is less.

² CCR, 2004

A plain reading of the aforesaid clause shows that the amount of refund claim is limited to that lying in balance at the end of the quarter. It nowhere provides that the balance has to be considered as the amount shown as closing balance in ST-3 return. Rules regarding the interpretation of taxing statutes including the notifications issued therein have been succinctly reproduced in **Commissioner (CGST) v. Safari Retreats (P) Ltd. 2024 SCC OnLine SC 2691** and it has been held:-

25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:

- (a) A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;*
- (b) If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the Legislature to step in and remove the absurdity;*
- (c) While dealing with a taxing provision, the principle of strict interpretation should be applied;*
- (d) If two interpretations of a statutory provision are possible, the court ordinarily would interpret the provision in favour of a taxpayer and against the Revenue;*
- (e) In interpreting a taxing statute, equitable considerations are entirely out of place;*
- (f) A taxing provision cannot be interpreted on any presumption or assumption;*
- (g) A taxing statute has to be interpreted in the light of what is clearly expressed. The court cannot imply*

anything which is not expressed. Moreover, the court cannot import provisions in the statute to supply any deficiency;

- (h) There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the Legislature's failure to express itself clearly;*
- (i) If literal interpretation is manifestly unjust, which produces a result not intended by the Legislature, only in such a case can the court modify the language;*
- (j) Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;*
- (k) It is not a function of the court in the fiscal arena to compel the Parliament to go further and do more;*
- (l) When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage.*

In view of the above, it is clear that clause 2(g) has to be read as it is without any addition or subtraction of words and clause 2(g) cannot be interpreted on any presumption or assumption that balance has to be considered as the amount shown as closing balance in ST-3 return. The interpretation to the contrary placed in the impugned order is therefore clearly erroneous and is not flowing from a plain reading of clause 2(g) of the notification.

14. The view taken above finds support from the order of coordinate bench of this Tribunal in Vaibhav Global Limited vs. Commissioner, CGST [Final Order No.50041/2022 dated 18.01.2022 passed in Service Tax Appeal No.51118 of 2019-SM] reported in 2022 SCC OnLine CESTAT 2062. In the said case also, incorrect figures of credit were disclosed in ER-2 return, discrepancy was noted only after expiry of time period for revising the return, the discrepancy was brought to the notice of the department by a letter and the refund claim was rejected by relying on clause 2(g) of the same notification, the coordinate bench held as follows:-

10. *A perusal of clause (g) of Notification No. 27/2017 (supra) shows that it speaks of closing balance of credit available with assessee, and nowhere in entire notification, there is any mention that the closing balance is to be considered as the amount shown as closing balance in ER2 Return.*

10.1 *The objection of department is solely on the basis of closing balance declared in ER2 Return. The stand of department that since the appellant did not opt for filing revised return within the given time, they could claim refund of the amount as declared in ER2 Return only. But, there has been no objection to the submissions made by the appellant from the very beginning.*

10.2 *It is a settled law that the substantive benefit cannot be denied on such highly technical reasons, as the law has been laid down by Hon'ble Supreme Court in the case of Mangalore Chemical & Fertilizers Ltd. (supra). I find that in the case of Mach Aero Components P. Ltd. (supra) almost identical issue been settled, that mere non furnishing of some information in ER-12 Return could not be the sole basis to deny the otherwise eligible benefit. I find that none of the authorities below have discussed the said decision in their orders. The case of appellant is also supported with the decision of this Tribunal in the case*

of Cenveo Publisher Services India Ltd. (supra) wherein it has been held that no part of rebate can be rejected on the ground that in the declaration or intimation filed by appellant, amount mentioned is different from actual claim.

11. *In view of the above, I hold that the denial of refund claim in part, solely on the basis that the same was to be given in respect of closing balance of credit as declared in the return for the Month of June 2017, is not legal and proper, as substantive benefit cannot be denied on technical reasons, all the more, when there was no such condition in Notification No. 8/2016-CE (NT) dated 01.03.2016.*

Thus, clearly clause 2(g) of the notification has been incorrectly interpreted in the impugned order and rejection of refund claim on this ground is not sustainable.

15. Further, both the parties are ad-idem to the fact that no objection has been raised by the Revenue to the revised return for the subsequent period Oct'2015 to March'2106 showing the same opening balance as disclosed by the Appellant in corrigendum for the period April'2015 to Sep'2015. Now once the said return and also the corrigendum has not been disputed and rejected by the Revenue, then adverse inference cannot be drawn merely because the Appellant could not revise the return for period April'2015 to Sep'2015 within the prescribed time period and corrected the mistake immediately upon noticing the mistake. It is not disputed before me that by the time the Appellant realised the mistake, the time period for revising the return got expired and therefore the Appellant cannot be expected to perform an impossible task. Thus, I find no reasonable reason for not extending the benefit of the corrigendum to the Appellant.

16. The other finding in the impugned order that return for the subsequent period Oct'2015 to March'2016 initially filed on 12.04.2016 was revised on 28.05.2016 i.e. after filing of refund

claim on 20.05.2016, also cannot be sustained, in view of paragraph 3 of the notification which requires the Assistant Commissioner or the Deputy Commissioner to not only call for the documents for verification but also satisfy himself about the correctness of the claim, at the time of sanctioning of refund claim. Therefore, when the procedure contemplated in the notification requires verification etc. of refund claim and supporting documents at the time of sanctioning and prior to it, then merely because return for Oct'2015 to March'2016 was revised on 28.05.2016 i.e. after filing of refund claim on 20.05.2016, did not amount to any material irregularity, particularly when the SCN was issued on 11.08.2016 i.e. much after the return was revised. Thus, this cannot be a ground for rejecting the refund claim.

17. As regards finding in the adjudication order regarding taking credit within a period of one year, I find that the said finding has been recorded only on the ground that the amount of credit was not disclosed by the Appellant in ST-3 return for the period April'2015 to Sep'2015. The adjudicating authority appears to have misguided himself by taking a view that credit is taken by declaring the amount of credit in ST-3 return. On the contrary, credit is always taken in account books and/or other statutory records. The disclosure of opening/closing balance of credit and utilised amount of credit in ST-3 may be a condition required to be complied by a taxpayer, but the same by itself is not a condition to claim credit.

18. Further, there is absolutely no finding in the adjudication or appeal order that the invoices in question were issued prior to period of one year. On the contrary, the Appellant in its defence reply and memo of appeal had categorically pleaded that all the invoices on which credit was claimed were within a period of one year, as credit was claimed in May'2015 whereas the invoices were issued subsequent to May'2014. The Appellant also disclosed the details of invoices in the defence reply as well as in the memo of appeal to demonstrate that the invoices were issued within a period of one year. This was also supported by

the Certificate issued by the Chartered Accountant filed along with the refund claim. On these materials on record, no adverse finding has been recorded by the two authorities and therefore the submission to the contrary made by the Ld. A.R. deserves to be rejected.

19. In view of the above discussion, the appeal deserves to be allowed with direction to the Adjudicating Authority to sanction the refund claim in accordance with law.

(Order pronounced in open court on - **18.02.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS