CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Condonation of Delay Application No.70053 of 2024
(On behalf of Respondent) **IN**
Excise Cross Objection No.70052 of 2024 IN
Excise Appeal No.70301 of 2023

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1097-19-20 dated 15/11/2019 passed by Commissioner (Appeals) Central Excise & CGST, Noida)

Commissioner of Central Excise &

CGST, Noida **.....Appellant**

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

VERSUS

M/s ST Microelectronics Pvt. Ltd., **....Respondent**

(Plot No.1, Knowledge Park, Noida-201308)

APPEARANCE:

Shri Santosh Kumar, Authorised Representative for the Appellant
Shri Nishant Mishra, Advocate &
Ms Parnita Gupta, Advocate for the Respondent

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

FINAL ORDER NO.70093/2025

DATE OF HEARING : 19 February, 2025
DATE OF DECISION : 19 February, 2025

SANJIV SRIVASTAVA:

The Respondent-assessee has filed the present Miscellaneous Application for condoning the delay in filing the Cross Objection in the appeal filed by Revenue before this Tribunal.

1.2 In view of the submissions as explained by the learned Counsel, the delay in filing the present Cross Objection before this Tribunal is condoned and the Miscellaneous Application (COD) filed by the respondent is allowed.

1.3 Further, with consent of both the sides, I proceed to hear the appeal.

1.4 This appeal is directed against Order-in-Appeal No.NOI-EXCUS-002-APP-1097-19-20 dated 15/11/2019 passed by Commissioner (Appeals) Central Excise & CGST, Noida. By the impugned order, Commissioner (Appeals) has set aside the Order-in-Original allowed the appeal filed by the appellant-assessee.

2.1 Aggrieved by the above order, revenue has filed the present appeal on the following grounds:-

> *"2.1.1 The period of refund claim in the instant case is April-June 2016. The notification no. 14/2016-CE(NT) dated 01.03.2016, substituted clause (b) of the Paragraph 3 of the Notification No. 27/2012-CE(N.T) dated 18.06.2012 and it is pertinent to mention that by virtue of the said substitution the clarity in calculation of the period of limitation was reached unambiguously. After this substitution, the clause (b) reads as follows:-*
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> *(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."*

3.1 I have heard Shri Santosh Kumar learned Authorised Representative appearing for the revenue and Shri Nishant Mishra and Ms Parnita Gupta learned Counsel appearing for the Respondent.

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

4.2 As Commissioner (Appeals) has specifically acknowledged that in the entire case refund claim was being filed within one year from the last date of the order, from which refund claim pertains.

4.3 I also find that the issue is squarely covered by the various precedent decisions. In case of Suretex Prophylactics India Pvt. Ltd [2020 (373) E.L.T. 481 (Kar.)], Hon'ble Karnataka High Court has observed as follows:

> ***10.*** *A plain reading of the above Rule would indicate that where any input for input service is used in the manufacture of final product which is cleared for export under Bond or letter of undertaking, the Cenvat credit in respect of the same, so used shall be allowed to be utilized by the manufacturer or provider of output service so used and shall allowed to be utilized by the manufacturer or provider of output service and if for any reason, such adjustment is not possible, the manufacturer or the provider of output service would be entitled to seek refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification. To put it differently, in terms of Rule 5 of CENVAT Credit Rules, 2004 when a manufacturer is exporting the final product continuously without payment of duty, the CENVAT Credit on inputs-input services would be accumulating to his CENVAT Credit records. Such manufacturer would be entitled to utilize the CENVAT Credit either for payment of excise duty on final products cleared for home consumption or for export on payment of duty or for payment of service tax on output service. If these contingencies are not forthcoming for any reason, then manufacturer/output service provider can seek refund as provided under Rule 5 read with relevant or extant notifications so issued.*

11. *The Central Government in exercise of the power conferred by Rule 5 of Cenvat Credit Rules, has from time to time issued several notifications and it would suffice the notifications which would be relevant for the purposes of the present appeals only being noted. They are :*

(i) Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006;

(ii) Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012; and

(iii) Notification No. 14/2016-C.E. (N.T.), dated 1-3-2016.

The above referred three notifications would clearly indicate that same has been issued by the Central Government in exercise of the powers conferred under Rule 5 of CENVAT Credit Rules, 2004. Refund of unutilized Cenvat credit under Rule 5 is subject to the above notification and clause (6) of the notification dated 14-3-2006 which has bearing is extracted hereinbelow :

"The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994 in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

The above referred clause (6) also finds a place in the subsequent notification dated 18-6-2012 which would clearly indicate that the period specified in Section 11B of the Central Excise Act, 1944 would squarely be attracted in respect of the claims made for refund of Cenvat credit.

Notification dated 1-3-2016 is a notification issued amending the Notification No. 27/2012, dated 18-6-2012 whereunder paragraph 3 of clause (b) of notification dated

18-6-2012 came to be substituted as indicated hereinbelow :

"(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."

11. *Hon'ble Apex Court in the case of Union of India & Others v. Uttam Steel Limited reported in (2015) 13 SCC 209 = 2015 (319) E.L.T. 598 (S.C.) has held that limitation period under Section 11B has to be strictly applied and it would not be open to subordinate legislation to dispense with the requirements of Section 11B. It has been further held :*

"10. We have heard the Learned Counsel for the parties and Shri Bagaria, the Learned Amicus Curiae at some length. There is no doubt whatsoever that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it was time-barred before an amending Act with a larger period of limitation comes into force. A number

of judgments of this Court have recognised the aforesaid proposition :

10.1 Thus, in S.S. Gadgil v. Lal and Co. [AIR 1965 SC 171], this Court stated : (AIR p. 177, para 13)

"13. As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income tax Act before it was amended, ended on 31-3-1956. It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party under Section 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to Section 18 of the Finance Act, 1956, only a limited retrospective operation i.e. up to 1-4-1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred."

10.2 To similar effect is the judgment in ITO v. Induprasad Devshanker Bhatt [AIR 1969 SC 778]. The Court held : (AIR p. 783, para 6)

"6. In our opinion, the principle of this decision applies in the present case and it must be held that on a proper construction of Section 297(2)(d)(ii) of the new Act, the Income Tax Officer cannot issue a notice under Section 148 in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was barred under the old Act at the date when the new Act came into force. It follows therefore that the notices dated 13-11-1963 and 9-1-1964 issued by the Income Tax Officer, Ahmedabad were illegal and ultra vires and were rightly quashed by the Gujarat High Court [Induprasad Devshanker Bhatt v. J.P. Jani, 1964 SCC OnLine Guj 18 : (1965) 58 ITR 559] by the grant of a writ."

10.3 In New India Insurance Co. Ltd. v. Shanti Misra [(1975) 2 SCC 840], this Court said : (SCC p. 846, para 7)

"7. ... '(2) ... The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation.'"

10.4 Similarly in T. Kaliamurthi v. Five Gori Thaikkal Wakf [(2008) 9 SCC 306], this Court said : (SCC p. 322, para 40)

"40. In this background, let us now see whether this section has any retrospective effect. It is well-settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision

came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."

10.5 For the latest exposition of the same rule see Thirumalai Chemicals Ltd. v. Union of India [(2011) 6 SCC 739 : (2011) 3 SCC (Civ) 458] , SCC at para 29.

11. The effect of the amendment of Section 11-B on 12-5-2000 is that all claims for rebate pending on this date would be governed by a period of one year from the date of shipment and not six months. This, however, is subject to the rider that the claim for rebate should not be made beyond the original period of six months. On the facts of the present case, since the claims for rebate were made beyond the original period of six months, the respondents cannot avail of the extended period of one year on the subsequent amendment to Section 11B.

12. The effect of Section 11B, and in particular, applications for rebate being made within time, has been laid down in Mafatlal Industries Ltd. v. Union of India [[1997) 5 SCC 536] , thus : (SCC pp. 631-32, para 108).

"108. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff — whether before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991 or thereafter — by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said

enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 — and of this Court under Article 32 — cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

The said enactments including Section 11B of the Central Excises and Salt Act and Section 27 of the Customs Act do constitute 'law' within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a *complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal — which is not a departmental organ — but to this Court, which is a civil Court."*

(emphasis in original)

From the law laid down by this decision it is clear that all claims for rebate/refund have to be made only under Section 11-B with one exception—where a statute is struck down as unconstitutional. Further, the limitation period of six months has to be strictly applied."

Thus, the irresistible conclusion which has to be necessarily drawn is to the effect that in respect of refund of claims made under Rule 5 of CENVAT Credit Rules, 2004 the provisions of Section 11B of the Central Excise Act would be squarely applicable. Even in respect of the refund claims made under the CENVAT Credit Rules, 2004 insofar as it relates to "service providers" under the Finance Act, 1994, the provisions of Central Excise Act, 1944 as specified in Section 83 of the Finance Act, 1994 would cover the same inasmuch as, Section 11B also finds a place in Section 83 of the Finance Act, 1994.

12. *Though argument is sought to be put forward by contending that by virtue of notification dated 1-3-2006 specifying the period of limitation, we are not inclined to accept the same, inasmuch as, Rule 5 of CENVAT Credit Rules itself clearly specifying that such refund claims would be subject to "such safeguards, conditions and limitations as may be specified, by the Central Government, by notification" and the above referred Notification No. 5/2006 and 27/2012 clearly specifying in clause (6) and clause 3.0(b) respectively that "before the expiry of the period specified in Section 11B of the Central Excise Act, 1944" it cannot be gainsaid by the appellants that provisions of Section 11B of the Central Excise Act is not attracted to the* *refund claims made under CENVAT Credit Rules, 2004. Hence, we answer the substantial questions of law formulated in appeals 31/2017, 32/2017, 33/2017 & 25/2018 by holding that refund applications filed under the CENVAT Credit Rules, 2004 cannot be without reference to limitation or time prescribed under Section 11B of the Central Excise Act, 1944.*

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…."***

4.4 In the case of M/s Span Infotech (India) Pvt. Ltd. 2018 (12) GSTL 200 (T-LB) Larger Bench of this Tribunal has observed 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.
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> **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."

4.5 In view of the above, I uphold the impugned Order-in-Appeal.

5.1 Appeal filed by the revenue is dismissed. Cross Objection also gets disposed of.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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