CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

(E-Hearing)

Service Tax Appeal No.70391 of 2023

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1495-1496-19-20 dated 03/03/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Headstrong Services India Pvt. Ltd., ...Appellant

(D-4, Sector-59, Noida-201301)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida ....Respondent

(C-56/52, Renu Tower, Sector-62, Noida)

WITH

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APPEARANCE:

Shri Prasad Paranjape, Advocate for the Appellants
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NOs.70848-70849/2025

DATE OF HEARING : 16 October, 2025
DATE OF DECISION : 16 October, 2025

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Appeal No.NOI-EXCUS-001-APP-1495-1496-19-20 dated 03/03/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order, Commissioner (Appeals) has upheld Order-in-Original No.R-171/AC/Div-II/CGST/Noida/2017-18 and R-170/AC/Div-II/CGST/Noida/2017-18 both dated 12.04.2018. By the Orders-in-Original following has been held:-

A. Order-in-Original No.R-171/AC/Div-II/CGST/Noida/ 2017-18

"ORDER

I hereby reject the refund claim of Rs.1,31,44,528/- (Rupees One Crore Thirty One Lakhs Forty Four Thousands Five Hundred and Twenty Eight only) under Rule 5 of the Cenvat Credit Rules 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012, as discussed above."

B. Order-in-Original No.R-170/AC/Div-II/CGST/Noida/ 2017-18

"ORDER

I hereby reject the refund claim of Rs.1,14,70,210/- (Rupees One Crore Forteen Lakhs Seventy Thousands Two Hundred and Ten only) under Rule 5 of the Cenvat Credit Rules 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012, as discussed above."

2.1 Appellant is registered with the Department for providing taxable services under the category of Information Technology Software Services & Business Auxiliary Services. They are also availing the facility of Cenvat Credit in respect of the input services received by them for providing output services as per CENVAT Credit Rules, 2004.

2.2 Appellant on-

- 29.12.2016 filed a refund claim for the period January, 2016 to March, 2016 under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE(NT) dated 18.06.2012 for refund of Rs.1,14,70,210/-.

- 28.06.2017 filed a refund claim for the period July, 2016 to September, 2016 under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE(NT) dated 18.06.2012 for refund of Rs.1,31,44,528/-.

2.3 After due verifications of the refund claims filed, it was observed that the refund claims were not maintainable for various reasons therefore the same was taken up for consideration by adjudicating authority after offering opportunity of hearing to the appellants on 22.12.2017, 26.02.2018, 16.03.2018 and 22.03.2018.

2.4 Both the refund claims were rejected as per the Order-in-Original referred in para-1 above.

2.5 Aggrieved appellants have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.6 Aggrieved appellant have filed these appeals.

3.1 We have heard Shri Prasad Paranjape learned Counsel appearing for the appellants and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Receipt of consideration in foreign exchange has been duly evidenced by the documents submitted.
- Substantive benefit of refund cannot be denied on the ground of procedural lapses. Reliance is placed on the following decisions:-
    - JFE Steel India Vs Commissioner 2021 (44) GSTL 292 (Tri.-Chan.);
    - Samsung India Electronics V CCE 2024 (16) Centax 343 (Tri.-All);

- The appellant has fulfilled the documentary requirements provided under rule 5 of Cenvat Credit Rules read with the Refund Notification.

- Specific counter to the findings of the Appellate Authority in the impugned order as follows:-

Sr. No.	Order Finding in the Impugned	Specific counter to the finding
1.	FIRAs has been submitted instead of the FIRCs. Export realization certificates such as FIRCs/BRCs are not submitted.	a) Foreign exchange receipt is a substantive condition which is satisfied. b) FIRC or FIRA are merely documents substantiating the same. c) FIRA is for advances whereas FIRC is for final invoice. d) In any case, Appellant has submitted the reconciliation and Chartered Accountant certificate which is not disputed.
2.	Original export invoices were made available for verification	a) Not a requirement under the Refund Notification. b) Export when declared in the return has not been challenged.
3.	In absence of challans evidencing the payment of service tax, it is impossible to ascertain whether the amount of refunds claimed by the Appellant is admissible or not.	a) Not a requirement under the Refund Notification. b) Credit claimed has never been disputed.
4.	The bank statements were found to be incomplete.	a) Not a requirement under the Refund Notification. b) Credit claimed has never been disputed.
5.	There is no co-relation between the export invoices and the FIRCs.	a) Submitted to the Respondent b) Not a requirement under the Refund Notification.
6.	In many cases, description of export invoices provided by the Appellant did not find any mention in FIRCs.	a) FIRCs are issued by banks and with co-relation and CA certificate, realization of export proceeds is evidenced, and no challenge is ever raised to the export status of the Appellant's services.

- Without prejudice, in case of the appellant's refund claims are found to be ineligible then the appellant is entitled to receive the refund of the Cenvat Credit in cash.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 Impugned order records as follows:-

> *"8. I have carefully gone through the issues involved in both the appeals and find that in the grounds of appeal, the appellant stated that the original input invoices of the company are archived for safety purposed and the process*

of retrieval is a time consuming process and as such they were not in a position to submit such original invoices.

Another ground taken by the appellant is that the so-called Cenvat Credit Register was made available to the Department which was attached with their refund application. It is also stated that the amount of refund claimed was already reversed in their books of accounts in their submission. Another submission is that the procedural requirement of submitting the BRC cannot be fulfilled in all the cases and therefore a liberal approach is required as book advices alongwith co-relation with exports is made available.

10. From the submission of the Appellant and the grounds taken by the appellant in both the appeals, I find that both the appeals pertained to non-production of relevant records for verification or scrutiny by the refund sanctioning authority in terms of the safeguards, conditions and limitations imposed under Notification No.27/2012-CE(NT) dated 18.06.2012. It is found that the subjective satisfaction of the sanctioning authority as to the eligibility, correctness, admissibility and legality of the refund claim is of utmost importance before granting the refund as being claimed by the appellant which is having a bearing on the ex-chequer of the Central Government in as much as such refunds will be made out of the revenue account of the Govt. of India.

11. The finding of the Adjudicating Authority that the FIRCs submitted by the appellant was actually Inward Remittance Advice pertaining to advance receipts only and that such certificates are not the export realization certificates has not been disputed by the appellant before me. It is also not disputed that submission of BRCs are required under the provision of Notification No.27/2012-CE(NT) dated 18.06.2012.

12. The finding of the original authority that the original copies of export invoices were not made available for verification was also not disputed by the appellant in the present proceedings. Neither the requisite documents were produced before the original authority nor it was produced before the appellate authority and, therefore, the admissibility or otherwise of the refund claims cannot be ascertained. On this issue, their bold assertion that such original documents are being archived and kept under safe custody and retrieval of such documents is a long drawn process does not help the appellant in any manner. No supporting documents in any form has been made available in these appeals, and therefore, the appellant has not come up with clean hands in filing the present appeals.

13. The findings of the Adjudicating Authority that documentary evidence regarding payment of Service Tax against the input service invoices are not made available to the Department has not been rebutted by the appellant. In the absence of challans etc evidencing payment of Service Tax, it is impossible to ascertain as to whether the amount of refunds that has been claimed by the appellant in their refund claims was actually admissible or not. Even the bank statements submitted by the appellant was found to be incomplete which was not rectified or clarified by the appellant with supporting documentary evidences even before the appeal proceedings.

14. The finding of the original authority that the appellant failed to produce original copies of export invoices and original copies of FIRCs, and without such documents correlation was impossible, and therefore, he also found that in many cases description of export services provided by the appellant did not find mention in the FIRCS Such factual findings has not been rebutted by the appellant.

15. From these factual background and the specific findings of the Adjudicating Authority, I find that the *appellant has not been able to rebut the findings of the Adjudicating Authority in both the appeals and also that the appellant has not come up with any supporting documents or documents that may be of some help or assistance to them to come to a definite conclusion at the appeal stage Since the appellant in both the cases did not come up with any justification nor submitted the documents that is required to establish the admissibility or otherwise of the refund claims for the quarters July, 2016 to September, 2016 and January, 2016 to March, 2016, I find that the appeals filed by M/s Headstrong Services India Pvt. Ltd. is devoid of any merit and is therefore, liable to be rejected."*

4.3 In the present case, refund claim of the appellants has been denied on the basis of the findings that the exports of services provisions will not be applicable to the appellants for the reasons that no BRCs/FIRCs were produced for proving their claim and to treat the services as export of services apart from ascertain other reasons stated with regards to debit entries etc. and admissibility of Cenvat credit. We do not find any merits in the said arguments in the impugned order. Evidently, we observe that appellants filed ST-3 at the appropriate time claiming the service as export of services. These ST-3 returns have never been challenged by revenue authorities before any forum. It is only in the refund proceedings under Rule 5 the benefit of the said Rule is sought to be denied by stating that these services are not export of service.

4.4 In the case of JFE Steel India Vs Commissioner 2024 (44) GSTL 292 (Tri.-Chan.) Tribunal has held as follows:-

*"**10.**The present issue is in respect of the refund claims filed in terms of Rule 6 of the Cenvat Credit Rules, 2004 as amended from time to time. The said rule provides for the refund of accumulated credit in the Cenvat account in respect of goods and services exported under bond or undertaking. This rule is very specific and lays down how*

to determine the quantum of admissible refund from the accumulated credit. It is not a proceeding for the denial of credit available in the Cenvat account of the claimant. Thus even if the refund is denied then also the amount continues to be in the Cenvat account of the claimant.

11.*If the case of Revenue is that the activities undertaken by the appellants in present case is not amounting to Export of Service then the proceedings need to be initiated against the appellant for demanding the service tax in respect of the taxable services provided by the appellant. In the present case no such proceedings demanding the Service Tax on these taxable services provided by the appellant have been initiated in terms of Section 73 of the Finance Act, 1994. By not initiating any such proceedings Revenue itself has allowed these taxable services provided as Export of Services. Having done so they cannot in a proceeding under Rule 5 for refund of accumulated credit take the contrary stand and deny refund treating the services provided not to be export of services.*

12.*With the above observations I concur with the order of Learned Member (Judicial)"*

4.5 Hon'ble Delhi Court in case of BT (India) Private Limited [2023-VIL-770-DEL-ST has held as follows:-

"57. It becomes pertinent to note that both the Customs as well as the Excise Acts follow an identical procedure of self assessment. While Section 17 of the Customs Act enables an importer or an exporter, as the case may be, to self assess and pay the duty leviable on goods, the said provision further empowers the proper officer to verify the self-assessed return that may be submitted. In terms of Section 17(4) of the said enactment, if the proper officer on verification, examination or testing of the goods comes to the conclusion that the self assessment is incorrect, it

becomes entitled to reassess the duty leviable on goods. It is in extension of the aforesaid power that sub-section (5) of Section 17 speaks of reassessment and the obligation of the proper officer to pass a speaking order in support of the exercise of reassessment.

58. Section 27 enables a person to claim refund of duty or interest which may have been either paid or borne by it. Section 27(2) of the Customs Act, in terms identical to Section 11B (2) of the Excise Act, speaks of refunds being effected upon the proper officer being satisfied that the whole or any part of the duty

paid is refundable. Section 27(2) is thus a provision which is pari materia with Section 11B (2) of the Excise Act.

59. The Supreme Court in ITC Limited, notwithstanding Section 27(2) employing the expression 'satisfied' held that unless a self-assessed return is revised or doubted in exercise of powers of reassessment, best judgment assessment or where it be alleged that duty had been short levied, short paid or erroneously refunded, those powers would not be available to be exercised at the stage of considering an application for refund. Having noticed the statutory position which prevails, we turn then to the decisions which would have a bearing on the question which stands posited.

60. Flock (India) was one of the earliest decisions which dealt with the aspect of a claim for refund emanating from a return which had been duly assessed. In Flock (India), the self-assessed returns had been duly assessed by the Assistant Collector and the issue of classification was answered against the assessee. The aforesaid order of the Assistant Collector came to be affirmed by the Collector (Appeals). It was thereafter and while seeking to prosecute a claim for refund that the assessee sought a review of the aforesaid decisions which had been rendered by the authorities. Negativing the said contention, the Supreme Court observed that once an assessment filed had been *duly adjudicated in accordance with the procedure prescribed under the statute, it would be impermissible for the said decision being reviewed or revisited at the stage of consideration of a refund claim.*

61. In Priya Blue Industries, the Supreme Court was faced with a situation where a Bill of Entry had been duly assessed and the duty payable in terms of that assessment deposited under protest. It was thereafter that an application for refund came to be preferred. As would be evident from the conclusions ultimately recorded in that decision, the Supreme Court categorically held that once an order of assessment came to be made, the duty was liable to be paid in accordance with that order alone. Their Lordships pertinently observed that unless such an order of assessment is reviewed or modified in appeal, the duty as determined to be payable would remain untouched and it would not be open for an assessee to seek a review of the assessment order, bearing in mind the fact that the claim for refund is not akin to proceedings in appeal. It was further held that the authority which is enjoined to consider a refund claim can neither sit in an appeal over an assessment made nor can it review an order of assessment.

62. Both these decisions and the views expressed therein came to be specifically noticed and reaffirmed by three learned Judges of the Supreme Court in ITC Limited. The decision of the Supreme Court in ITC Limited assumes added significance, insofar as the present case is concerned, in light of it having found that a self-assessment return, even in the absence of a formal order dealing with the same, would nonetheless amount to an assessment. We had in this regard and in the preceding parts of this decision noticed the definition of the expression 'assessment' as contained in Rule 2(b) of the 1994 Rules which includes a self-assessment of service

tax and thus being evidence of a position similar and akin to that which obtains under the Customs and Excise Acts.

63. Their Lordships in ITC Limited categorically held that notwithstanding a self assessed Bill of Entry having been merely endorsed by the competent authority, the same would nonetheless amount to an 'assessment'. It was in that backdrop that it was held that once a self-assessed return had been duly accepted, the same could not be modified or varied by an authority while considering an application for refund.

64. It becomes pertinent to note that the appellant before the Supreme Court in that case, had sought to press the claim for refund asserting that it had due to inadvertence failed to submit a self-assessment return taking into consideration an exemption notification. It was this claim which came to be ultimately negatived by the Supreme Court and which held that a claim for refund cannot be entertained unless the order of assessment, and which would include a self assessment return, is modified in accordance with the procedure prescribed in the statute. In our considered opinion, it is these principles enunciated in Flock (India), Priya Blue Industries and ITC Limited, which compel and convince us to observe that the impugned order is clearly rendered unsustainable.

65. Undisputedly, the petitioner had submitted self-assessment returns proceeding on the basis that the output services rendered by it would qualify as an 'export of service' and thus it being not exigible to service tax. The aforesaid self-assessment returns remained untouched and had not been questioned by the respondents either in terms of Sections 72 or 73 of the Act. The application for refund of CENVAT credit was founded on the petitioner *assessing that it was not liable to pay service tax on services so exported. The accumulation of CENVAT credit came about in light of the various input services received by the petitioner and it having availed credit of service tax paid thereon in terms of Rule 3 of the CCR Rules. It was in respect of the accumulated CENVAT credit that the application for refund came to be made.*

66. In our considered view, unless the self-assessed return, as submitted had been questioned, re-opened or re-assessed and the assertion of the petitioner of the services rendered by it qualifying as an 'export of service' questioned or negatived in accordance with the procedure prescribed under the Act, its claim for refund could not have been negated. As was observed by the Supreme Court in ITC Limited, a self-assessed return also amounts to an 'assessment' and unless it is varied or modified in accordance with the procedure prescribed under the relevant statute, the same cannot possibly be questioned in refund proceedings. As the Supreme Court had held in the decisions aforenoted, the authority while considering an application for grant of refund neither sits in appeal nor is it entitled to review an assessment deemed to have been made. In fact, the Supreme Court in ITC Limited had described refund proceedings to be akin to execution proceedings.

67. We thus come to the firm conclusion that in the absence of the self-assessed return having been questioned, reviewed or re-assessed, the claim for refund of CENVAT credit could not have been denied by the respondents. When confronted with the application for refund, all that the respondents could have possibly examined or evaluated was whether the provisions of Rule 5 read along with the various prescriptions contained in the notification dated 18

June 2012 had been complied with. The respondents, at this stage of the proceedings, could not have doubted, questioned or undertaken a merit review of the self-assessed return which had been submitted.

68. The reliance which is placed on Clause 3(g) of the Notification dated 18 June 2012 also would not justify the denial of refund, since the expressions 'determine' and 'satisfy' as appearing in the parent Rule as also the Notification noted hereinabove would have to be construed bearing in mind the limited jurisdiction and authority which was available in the hands of the Adjudicating Authority and exercised by it while considering the application for refund. In any case, the mere usage of the expressions 'determine' or 'satisfy' would, in our considered opinion, not amount to expanding the nature of the authority which the second respondent could have exercised while evaluating an application for refund. Once the self-assessed return of the petitioner and in terms of which its claim of refund and of being inexigible to service tax had attained finality and had not been re-assessed or questioned, the refund was clearly liable to be granted automatically.

69. At the stage of consideration of the application for refund, it would be impermissible for the second respondent to question whether the services rendered by the petitioner amounted to an 'export of service' or even dwell upon issues which related to its principal claim of not being liable to pay service tax.

The recognition of such a power being available to be wielded while considering an application for refund would clearly be contrary to the principles propounded in ITC Limited. The acceptance of such a

contention would amount to recognising the existence of an adjudicatory function inhering in the refund sanctioning authority and would clearly be abhorrent to the principles enunciated in the said decision of the Supreme Court.

70. Since the liability or otherwise of the petitioner to pay service tax would flow and rest only upon the assertions made in the self-assessed return, the various issues which have been gone into by the second respondent while passing the impugned order would clearly be an exercise beyond the jurisdiction which could otherwise be recognised to exist at the stage of consideration of a refund claim. We thus find that the impugned order is clearly rendered unsustainable on this score and is liable to be set aside for the aforesaid reasons.

G. CERTAINTY IN TAXATION MATTERS

71. We also find merit in the contention of Mr. Gulati, who had assailed the impugned order additionally on the basis of the refunds which had been duly granted for earlier periods. While it is true that the principles of res judicata may not be strictly applicable, we find that the nature and ambit of services which were rendered by the petitioner across separate assessment periods had remain unchanged. The respondents do not base their decision on any change in circumstance or differentiation in the spectrum of services that the petitioner undertook across different block assessment periods.

72. In this regard, it would be pertinent to recall that the Supreme Court in M/s Radhasoami Satsang had held that while each assessment year may constitute a unit in itself, unless a 'fundamental aspect common to different assessment years has come to be altered', the taxing authorities would be bound by the view already taken and it would in any case be impermissible for them to take contrarian views with respect to an identical set of facts.

> *73. As noticed hereinabove, the respondents while passing the impugned order have not alluded to any material change which may have justified a different or contrary view being taken. We thus find ourselves unable to sustain the impugned order on this additional ground."*

4.6 In any case if the contention of the revenue is to be accepted and it is to be held that the services provided by the appellant will not qualify as "export of service" for the reason of non production of invoices, BRC's/ FIRC's then correct course would have been to demand the Service Tax in respect of these services which are claimed to be exported by the appellant. Nothing has been brought on record to show that the show cause notice demanding service tax has been issued to the appellant. In view of the fact that no proceedings demanding service tax in respect of these services provided by the appellant to overseas service recipients have been issued we do not find any merits in denial of refund claims filed by the appellant in terms of Rule 5 of CENVAT Credit Rules, 2004.

4.7 We also observe that 2 (h) & (i) of Notification No 27/2012-CE (NT) provides as follows:

> ***2. 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:-*
>
> *(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.*

In view of the above, in case the refund of the appellant made under Rule 5 is to be rejected then in that case appellant is entitled to take back the credit of the amount for which the refund claim is rejected. In terms of Section 142 (3) of the Central Goods and Service tax Act, 2017, this amount will have to be allowed as cash refund to the appellant. In case of Oil State Industries India Pvt. Lyd. [2022 (8) TMI 310 CESTAT-Mumbai] following has been held:

> *"5. The issue has been in a narrow compass here in this Tribunal. Appellant has not challenged the legality of the rejection of its refund application but only sought for re-credit of the debited CENVAT Credits after final confirmation by the Commissioner (Appeals) of its refund application rejecting the refund sought against accumulated CENVAT Credits on exports, as could be noticed from the prayer portion of Appellant's appeal memo filed before the Commissioner (Appeals), it had specifically prayed for re-credit of the amount to the Appellant in case refund sought by it is not allowed but unfortunately no finding is available to the order passed by the Commissioner (Appeals) with reference to the judgement cited above. Learned Counsel for the Appellant submits that the said amount is to be re-credited to the Appellant's input tax credit account and paid to it in cash as contemplated in Section 142 of the GST Act, 2017.*
>
> *5. In response to such submissions, learned Authorised Representative for the Respondent-Department submits that there is no requirement of any order from the Commissioner (Appeals) in view of express provision available in sub-Para (i) of Para-2 of Notification No. 27/2012-CX (NT) and in view of the Hon'ble Supreme Court judgments given in Smith Kline Beecham's case in the event by no finding by the Commissioner (Appeals), Tribunal can only remand the matter it for reconsideration.*
>
> *6. I have gone through the submissions, the relevant notification, relied upon case laws and the written note of the submissions. It is a fact that sub-para (i) of Para-2 of Notification No. 27/2012-CX (NT) permits the claimant to take back the credit of the difference between the amount claimed and amount sanctioned. Here amount sanctioned being zero, the entire credit could have been taken back*

by the Appellant but such an action can only be initiated upon completion of the entire adjudication and appeal process or by way of its abandonment or else in the event of taking a re-credit, if Appellant Authority allows the refund, it would amount to acceptance of dual benefits in taking advantage of improper wordings in the notification that remained silent as to at what stage the claimant can re-credit the amount back to its account. Such a long waiting by the Appellant in not venturing into such an unethical practice exhibits the bonafideness of a law abiding national. More importantly, going by Section 11 of the CPC if any relief is sought from the Court of Law and it is not expressly granted, it is deemed to have been refused. Therefore, Appellant has got every right to prefer an appeal before this Tribunal against such deemed refusal and to get the relief to which it is entitled to otherwise also. I am, therefore, of the considered view that Appellant is entitled to get cash refund of Rs.35,52,543/- with applicable interest, if any, against CENVAT Credit available to its credit during pre GST regime as per provision contained in Section 142(3) of the CGST Act."

4.8 In view of the above decision and taking note of the BRCs/FIRCs submitted by the appellants, we do not find any merits in the impugned order and the same is set aside.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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