

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH
E-Hearing**

Service Tax Appeal No. 70263/ 2020

(Arising out of Order-in-Appeals No. NOI-EXCUS-001-APP-1492-19-20 dated 28.02.2020 passed by the Commissioner (Appeals), CGST NOIDA)

Kronos Solutions India Pvt. Ltd.

Plot No. 5, Block B, Floor 4,5 & 6
Tower 4, Okaya Center, Sector 62,
NOIDA.

APPELLANT

VS.

Commissioner of CGST (Appeals)

C-56/42, Renu Tower, Sector 62,
NOIDA 201301.

RESPONDENT

Present for the Appellant : Shri N K Gupta, Advocate & Ms Dimple Bhasin, CA

Present for the Respondent : Shri Santosh Kumar Agarwal, AR

DATE OF HEARING/DECISION : 14/12/2020

FINAL ORDER NO. 70273 / 2020

PER ARCHANA WADHWA:

After hearing both the sides, duly represented by Shri N K Gupta, learned Advocate along with Ms Dimple Bhasin, Chartered Accountant appearing for the appellant and Shri Santosh Kumar Agarwal, learned Authorised Representative appearing for the Revenue, I find that the appellant was registered with the Service Tax department for providing taxable service under the category of 'Information Technology Software Services". They were availing the facility of cenvat credit in terms of Cenvat Credit Rules, 2004. As such on services being exported, they were entitled to refund of such accumulated credit. In terms of Rule 5 of said Rules read with Notification No. 27/2012-CE (NT) dated 18.06.2012, the appellant was required to debit the cenvat credit from their Cenvat Credit account at the time of filing of refund application. The appellant

submitted a voucher dated 05.03.2014 indicating reversal of credit amount equivalent to the refund claimed by them. However, the said reversal was not reflected in the relevant ST-3 return for the period October, 2013 to March, 2014 but the same were shown in the ST-3 return filed for the period April, 2015 to September, 2015. Accordingly, the Revenue entertained a view that the said condition 2(h) of the Notification does not stand satisfied and consequently, the appellant was not entitled to the refund.

2. In view of the foregoing, proceedings were initiated against them by way of show cause notice dated 09.06.2015, proposing to deny the refund claim. The said show cause notice culminated into an order passed by the Original adjudicating authority and upheld by the Commissioner (Appeals). Hence, the present appeal.

3. For better appreciation of the reasoning adopted by the lower authorities, I reproduce the relevant paragraphs from the impugned order of the Commissioner (Appeals):

7. I find that the appellant had filed refund claim under relevant rule 5 of the CCR, 2004, read with Notification No. 27/2012-CE(NT) dated 18.6.2012. The condition no. 2(h) of the said Notification reads as "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". As per the said condition the appellant was required to debit the claimed amount from Cenvat account at the time of making claim. The appellant in this case had submitted a copy of Voucher No. 1035 dated 05.03.2014 evidencing reversal of an amount equal to refund claim, in Cenvat receivable account along with refund claim. The said reversal was required to be reflected in relevant ST 3 return for the period October, 2013 to March, 2014 as well as in their Cenvat account register but the same was reflected in the ST-3 return and Cenvat account register for the period April, 2015 to September, 2015 i.e. after the lapse of more than one year which has also been accepted by the appellant themselves in their reply. I have perused the Cenvat Account register as well as ST-3 return for the period April, 2015 to September, 2015 of the appellant which confirms that the amount in question has

been debited by the appellant with delay of more than one year. Now the question arises whether delay in debiting the amount of claimed amount can be allowed or not. In this regard, I find that it is one of the condition of the said Notification 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. Thus, the appellant have violated the provisions of Notification No. 27/2012-CE(NT) dated 18.06.2012 as the voucher submitted by the appellant does not have any sanctity without the support of respective ledger account and statutory returns for the relevant period. Moreover, the appellant is regularly filing the refund claims and are very much aware of the procedures and Laws for filing the refund claims. In view of the above, I hold that since the condition of the Notification has not been fulfilled accordingly the refund to the appellant is not allowable.”

4. As is seen from the above, the appellant had taken a categorical stand that the debit was made on 05.03.2014, i.e. prior to filing of the refund claim. The Revenue is not disputing the said debit entry but is adopting a hyper technical view that such debit entry was reflected in the ST-3 return of subsequent period and not for the period in question. The entire idea of debit of cenvat credit before filing of refund claim is that an assessee does not avail the dual benefit of credit as also refund of the same. It is primarily for this reason that the relevant rule read with notification in question requires debit before filing of refund claim so as to avoid double benefit to the claimant. This was also observed by the Tribunal the case of **M/s. Kellogg and Andelson Management Service Pvt Ltd. Vs. CST, Chennai II [2018 (8) TMI 1680-CESTAT Chennai]**. Though the learned advocate has drawn my attention to various other decisions of the Tribunal laying down that even subsequent debit of the books of account is a sufficient compliance of the provisions of the Notification but I note that the said rulings are strictly not applicable to the facts of the present case inasmuch as the appellant had admittedly debited their credit account before filing of their refund claim. Even in terms of said rulings, (reference to the Tribunals’ decision in the case of **Commissioner of Service**

Tax, NOIDA vs M/s. Kiwi Technologies India Pvt. Ltd. [2018 (2) TMI 689-CESTAT, Allahabad] the debit of the account even subsequent to the date of filing of refund claim is not such a lapse so as to debar the assessee from the refund. Admittedly, such a refund claim cannot be denied on procedural ground. There is no dispute about the fact that services in question were exported and appellant is otherwise entitled to the refund of accumulated credit in terms of Rule 5 of the Cenvat Credit Rules read with Notification in question. Reference can also be made to Tribunal's decision in the case of **Synthesis Healthcare Service LLP vs. the Commissioner of GST & CE, (Chennai South) [2019 (3) TMI 1323]** as also to the decision in the case of **Exa Thermometric India Pvt Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Bangalore [2017 (6) TMI 845]** .

5. Inasmuch the books of accounts stand already debited by the appellant on 05.03.2014, before filing of refund claim on 20.03.2014, I find no justifiable reason to deny the refund claim on the said hyper-technical ground. Accordingly, the impugned order is set aside and Revenue is directed to refund the admissible amount of credit to the appellant.

6. The appeal is disposed of in the above terms.

Sd/-

**(Archana Wadhwa)
Member(Judicial)**

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