# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench COURT-2

## Service Tax Appeal No. 21902 of 2014

[Arising out of the Order-in-Appeal No.MLR-EXCUS-000-AC-APP-HAB-045-2014 dated 11.03.2014 passed by the Commissioner of Central Excise (Appeals), Mysore.]

**M/s. SKE & C KCT JOINT VENTURE,**
Strategic Storage of Crude Oil Project,
No.1, Chandrahasa Nagar, Permude, Bajpe,
Mangalore – 575057. **......Appellant**

**VERSUS**

**Commissioner of Central Excise**
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore -575 003. **.....Respondent**

**Appearance:**

Mr. Akbar Basha, Advocate Appeared for Appellant

Mr. P. Saravana Perumal, Authorized Representative for Respondent

**Coram:**

**Hon'ble Mr. P.A. Augustian, Member (Judicial)**

**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**FINAL ORDER No. 21783 of 2024**

Date of Hearing: 10.10.2024
Date of Decision: 10.10.2024

**PER: P.A. AUGUSTIAN**

This appeal is filed against Order-in-Appeal No.MLR-EXCUS-000-AC-APP-HAB-045-2014 dated 11.03.2014 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. The issue in the present appeal is regarding refund of service tax paid by the appellant as per the Audit report.

3. The brief facts are the Appellant is a joint venture registered with respondent under the category of 'works contract service'. Appellant had entered into joint venture agreement for the civil works for construction of underground 'Rock Cavern'. As per the agreement, the appellant had executed the civil works for construction of underground Rock Caverns at Mangalore and Udupi for Indian Strategic Petroleum Reserves limited (ISPR). Thereafter when Audit was conducted, certain observations were made regarding short payment of service tax in the year 2011 and in response to the said observation, appellant paid due amount with interest through reversal of CENVAT credit of Rs. 75,80,162/- on 03.08.2011 before issuance of show cause notice under protest. The penalty amount of Rs. 4,08,079/- was paid on 25.04.2012. Subsequently, on adjudication the adjudicating authority allowed the eligible CENVAT credit amounting to Rs. 67,92,079/- out of said amount of Rs. 75,80,162/- on production of documents vide Order-in-Original No. 24/2012 dated 14.12.2012. Since the appellant reversed CENVAT credit along with interest as per the Audit report the appellant had to pay their subsequent service tax liability through cash. The appellant filed a refund application dated 15.02.2013 for refund of the amount paid along with interest and penalty as per the objection made by Audit party. However, adjudicating authority vide Order-in-Original No. 29/2013 dated 04.07.2013 only allowed refund of penalty paid as per the Audit report amounting to Rs. 4,08,079/-. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) for refund of principal amount and interest which was paid by the appellant, however the Commissioner (Appeals) rejected the appeal vide impugned Order-in-Appeal dated 11.03.2014. Aggrieved by said order present appeal is filed before the Tribunal.

4. When the appeal came up for hearing, learned counsel for the appellant draws our attention to the impugned order wherein the reason given by the appellate authority to reject the refund claim was that the payment can only be made on a date prior to or on 03.08.2011,

however challans produced before the lower authority pertains to the period 06.08.2011 to 27.04.2012 which are later (subsequent) than 03.08.2011, such glaring discrepancy and lapse cannot be ignored / disregarded while sanctioning the refund. Learned counsel further draws our attention to the Order-in-Original No. 24/2012 dated 26.11.2012 where the adjudicating authority held that the appellant was eligible for credit and based on the said finding, adjudicating authority held that documents on which CENVAT credit was availed are proper. Hence appellant had applied for refund of service tax paid during the audit along with interest and penalty, further learned counsel submits that during audit, the demand was made on the ground of improper document/s and subsequently, when appellant produced the documentary evidence, the adjudicating authority allowed the reversal of the CENVAT credit. Learned counsel also draws our attention to the service tax ledger account pertaining to the period from 01.04.2011 to 31.03.2012. As per the documentary evidence an amount of Rs. 46,53,139/- was reversed on 03.08.2011.

5. The Learned Authorised Representative (AR) reiterated the finding in the impugned order.

6. Heard both sides and perused the records.

7. We find that there is no dispute regarding the facts of the case. As per the document available on record, appellant had paid the amounts as per the Audit Report vide IAR No.172/2011 dated 29.09.2011 under protest and subsequently, the matter was adjudicated by the adjudicating authority vide Order-in-Original No. 24/2012 dated 26.11.2012, wherein the adjudicating authority based on production of the document/challan confirmed eligibility of CENVAT credit of Rs. 67,92,078/- and rejected claim for Rs. 7,88,173/-. The appellant due to reversal of CENVAT credit along with interest and penalty as per the Audit observation, has paid their subsequent service tax liability through cash. The learned counsel submitted that once the adjudicating authority was satisfied with the documentary evidence produced by the appellant for allowing the CENVAT credit partially, it is not proper for the appellate authority to reject the claim on the ground

that documentary evidence as regards the payment of service tax by challan dated 03.08.2011 was not produced and the challans produced before the lower authority are pertaining to the period 06.08.2011 to 27.04.2012 which are later(subsequent than 03.08.2011). We find that from the facts the evidence that the said payment was made on a later date as per the objections made by audit party and payment was made under protest, the document produced by the appellant is sufficient to co-relate to the challan copies with the amount paid for the refund of due amount as claimed by the appellant. Further in the present case based on the very same document, adjudicating authority had allowed refund of penalty of Rs. 4,08,079/-. paid by the appellant. The Adjudicating Authority vide Order-in-Original No. 26/2011 dated 26.11.2012 categorically stated that; documents are having details of name, address and registration no. of the person providing input services and Sl. No. and date of the invoice bills as a case may be challans are issued under sub rule 1 as prescribed under Rule 4A of Service Tax Rules, 1994. The documents furnished by the noticee were reconciled. Further stated that the CENVAT credit of Rs.66,21,801/- availed by the noticee is proper and based on the said finding the adjudicating authority allowed the claim.

8. Learned counsel also relied on the decision of the **M/s. CGM Global (India)(Pvt.) Ltd. Vs. Commissioner Of Service Tax - 35taxmann. com 318 (Mumbai – CESTAT)** where it is held that the department cannot deny the refund of service tax alleging non-supply of requested document. It must specify in writing list of document required in addition to document already submitted by the assessee. As regards claim of refund of interest of Rs.7,45,213/-, the CENVAT credit of Rs.7,88,173/- out of Rs.75,80,162/- was rejected. Appellant has made claim for proportionate refund of interest out of Rs.8,52,025/- paid for entire amount. Thus, once it is found that appellant is eligible for refund of CENVAT credit amount availed, the interest paid along with principal amount under protest is also to be refunded. Moreover, as per the Order-in-Original No. 24/2012 dated 14.12.2012, adjudicating authority has only appropriated an amount of Rs. 7,729/- out of

Rs.7,22,936/- paid by the appellant as interest, fact being so and appellant is eligible for refund of balance interest.

9. In view of the above discussion the impugned order is liable to be set aside. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief if any, in accordance with law.

*(Operative portion of the order was pronounced in open court on conclusion of hearing.)*

**(P.A. Augustian)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

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