CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/21277/2018-SM, ST/21278/2018-SM, ST/21281/2018-SM, ST/21282/2018-SM, ST/21283/2018-SM, ST/21284/2018-SM

[Arising out of Order-in-Appeal No. 468-473/2018 dated 11/05/2018 passed by Commissioner of Central Tax , BANGALORE-II(Appeal)]

Intuit India Product Development Centre Private Limited
Campus8,pritech Park Sez Area,ecospace
Bellandur Village,varthur Hobli,bangalore
BANGALORE - 560103
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Bengaluru East
BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE - 560071
KARNATAKA

Respondent(s)

Appearance:

Shri HARISH BINDUMADHAVAN, Advocate and
Ms. DISHA GURSAHANEY, Advocate
PRESTIGE TRADE TOWER
LEVEL 14, 46 PALACE ROAD, HIGH GROUNDS,
BENGALURU - 560001
KARNATAKA

For the Appellant

Shri Kanipakam Murali, Superintendent(AR)

For the Respondent

Date of Hearing: 17/09/2018
Date of Decision: 17/09/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21359-21364 / 2018

Per : S.S GARG

The appellants have filed these six appeals arising out of the common impugned order dt. 11/05/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has dismissed the appeals of the appellant claiming refund and upheld the Orders-in-Original. Since all the appeals disposed of by the common impugned order and issue is identical in all the appeals, present six appeals are being disposed of by this common order. The details of refund claims are given hear in below :-

Period	Refund rejected
October 2013 to December 2013	Rs.7,53,312
January 2014 to March 2014	Rs.2,60,256
April 2014 to June 2014	Rs.4,65,101
July 2014 to September 2014	Rs.3,04,351
October 2014 to December 2014	Rs.11,88,700
January 2015 to March 2015	Rs.6,68,738

2. Briefly the facts of the present case are that the appellant is a unit registered under SEZ scheme and is engaged in the business of provision of Information Technology Software Services. They have entered into an agreement with their overseas firm vide which they have agreed to provide various services relating to information technology and Research & Development service which are in the nature of export of service and for

providing these services the appellant have availed various input services. The appellant in terms of provisions contained in notification No.12/2013-ST dt. 01/07/2013 filed refund claims for various periods cited in the table. Thereafter show-cause notices were issued to the appellant for non-submission of some of the documents as well as for filing the refund claims as time barred under the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. After following the due process, the original authority rejected the refund claims on the ground that the refund claims were not filed within the time limit of one year and the claimant has not fulfilled the conditions as prescribed at para 3(III)(e) of Notification No.12/2013-St dt. 01/07/2013. Aggrieved by the said order, appellants filed appeals before the Commissioner(Appeals) who rejected the claims as time barred. Hence the present appeals.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellants submitted that the impugned order is not tenable in law and is contrary to the facts of the case and the binding judicial precedents. He further submitted that the impugned order is liable to set aside mainly on the following grounds:-

a. The impugned order is a non-speaking order to the extent that it has not looked into the facts of the case and drafted in the hasty manner by wrongly referring the provisions of law. Further it also fails to consider the submissions made and also not provided opportunity of hearing thereby violating the principles of natural justice;

b. The order has not specified any cogent reason for rejection;

c. The adjudicating authority has not exercised the power vested with him to condone the delay;

d. The impugned order does not stand the test of legality that the SEZ Act 2005 overrides all other Acts and other legal provisions;

e. Appellant has a justifiable reason explaining the delay in filing the refund claims.

4.2. Learned counsel further submitted that the refund claims filed by the appellant, being a SEZ Unit, shall be regulated by Notification No.12/2013-ST whereas the impugned order has wrongly considered the refund claims under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No.5/2006-CE(NT) dt. 14/03/2006 or Notification No.27/2012-CE(NT) dt. 18/06/2012. He further submitted that the impugned order is totally a non-speaking order and has been passed without considering the facts of the case and is also in violation of the Circular issued by the CBEC vide Master Circular No.1053/02/2017-CX dt. 10/03/2017 which mandates the Department to pass order which can stand legal scrutiny at the appellate authorities / courts. The appellant also relied upon the decision of the Hon'ble Supreme Court in the case of Jt. Commissioner of Income Tax, Surat Vs. Saheli Leasing & Industries Ltd. [2011(22) STR 97 (SC)] wherein the Supreme Court has held as under:-

> *7(a). It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment / order."*

4.3. The learned counsel also submitted that it is a settled position of law that the circular issued by the CBEC is binding on the Department. In this regard, he relied upon the following case laws:-

i. CCE, Vadodara Vs. Dhiren Chemical Industries [2002(139) ELT 3 (SC)]
ii. Union of India Vs. Arviva Industries (I) Ltd. [2007(209) ELT 5(SC)]

4.4. He further submitted that the impugned order is also in violation of principles of natural justice as the appellant has not been afforded any opportunity of hearing and the Commissioner(Appeals) has passed ex parte order and that too on the basis of wrong facts and law. In support of this submission, he relied upon the decision in the case of Excel India Pvt. Ltd. Vs. CST, Bangalore [2007(7) STR 542 (Tri. Bang.)] wherein the Tribunal has observed as under:-

> *" Thus the order is not a speaking order and bad in law. It is also seen that the appellants are receiving reimbursement from their clients for various expenses incurred on their behalf. The Department has sought to levy service tax on these receipts. In our view, the Order-in-Original suffers from these defects. In the guise of serving the Revenue, the Adjudicating Authority should not attempt to confirm the demand raised in the Show Cause Notice wily-nily. The appellant challenges the computation of service tax both in respect of CHA services and C & F agents services. There is no justification also for imposing a savage penalty of Rs. 5 Crore. In these circumstances, we set aside the impugned order and remand the matter to the Adjudicating Authority for de novo consideration. The Adjudicating Authority shall scrutinize all the records submitted by the appellants and pass a well reasonable order. If any activity is charged to service tax either under CHA or C&F, the adjudicating authority should give proper reasons."*

4.5. Further in the case of Uma Nath Pandey Vs. State of UP [2009-TIOL-65-SC-MISC], the apex court has decided that *natural justice is the essence of fair adjudication and the adherence to principles of natural justice is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Further the purpose of following the principles of natural justice is the prevention of miscarriage of justice*.

4.6. It is his further submission that the adjudication order has not considered the justified reasons given by the appellant for delay in filing the refund claims and also has not recorded any findings on the same. He further submitted that Notification No.12/2013 categorically provides the power to the Refund authority to condone the delay and such power must be legitimately used and unless there is an element of unreasonableness or perversity for the explanation for such day, such delay should be liberally condoned. The learned counsel further made his submission that it has been held in various judicial precedents by the Hon'ble Tribunal that the spirit of refund notification is such that a liberal approach would be adopted while considering the condonation of delay in filing the refund application and as the appellant is a SEZ unit, the delay in filing the refund claims by SEZ unit in respect of tax paid on services used for SEZ operations must be condoned liberally. In this regard, he relied upon the following decisions:-

i. Woco Motherson Advanced Rubber Tech Ltd. Vs. CCE, Rajkot [2013 31 taxmann.com 363 (Ahmedabad – CESTAT]
ii. Synefra Enginnering and Construction Ltd. Vs. CCE, Vadodara-II [2013 34 taxmann.com 41 (Ahmedabad – CESTAT]

5. On the other hand, the learned AR defended the impugned order.

6.1. After considering the submissions of both the parties and perusal of records, I find that in the present case, the Commissioner(Appeals) while rejecting the refund claims of the appellant has violated the principles of natural justice and has not afforded opportunity of hearing to the appellant to explain the justifiable reasons for filing refund claims after the periods specified in the notification. Further I find that the Commissioner(Appeals) has totally ignored the Notification No.12/2013 under which the appellant has filed the refund claims rather the

Commissioner(Appeals) has wrongly considered the refund claims of the appellant under Rule 5 of the CENVAT Credit Rules read with Notification No.5/2006-CE(NT) dt. 14/03/2006 which was not the case of the appellant at all. Further I find that the appellant being a SEZ unit and has availed various input services for their exports under the SEZ Act which overrides all other acts as per Section 51 of the Finance Act. Further I find that in the present case, non-offering an opportunity of hearing is totally contrary to the various decisions relied upon by the appellant cited supra. Therefore the impugned order is bad on this count. Further I find that the Tribunal in the case of Woco Motherson Advanced Rubber Tech. Ltd. (supra), this Tribunal held as under:-

> *5.… … … the action of Assistant Commissioner without giving an opportunity to the appellant to explain the delay in rejecting the refund claim on the ground of delay, cannot be sustained. This is a fit case for condonation of delay having regard to the facts and circumstances. While the appellant have admittedly produced invoices and have got proof of payment, it is appropriate that the matter is remanded to original adjudicating authority to verify the correctness of the amounts claimed, proof of payment and sanction of refund. It is made clear that the delay in filing the refund claim is condoned*.

Again in the case of Synefra Engineering and Construction Ltd. (supra), this Tribunal held as follows:-

> *7. It can be seen from the above that the said provision specifically directs the Assistant Commissioner or the Deputy Commissioner, to consider the application for refund of claim if the said refund claim is filed within a period of six months and if a request is made for condoning the delay. I find from the said*

> *provision that the lower authorities are required to consider the refund claim even if it is filed beyond the period of six months from the date of payment of service tax to the service provider. I find that this Bench in the case of WOCO Motherson Advanced Rubber Tech. Ltd. (supra) had specifically dealt with the same provision, in an identical situation, and held as under:-*
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> > ***5.*** *Coming to the limitation, taking note of the fact that the notification itself was issued in March 2009, a liberal approach for condonation of delay was required. Therefore, the action of Assistant Commissioner without giving an opportunity to the appellant to explain the delay in rejecting the refund claim on the ground of delay, cannot be sustained. This is a fit case for condonation of delay having regard to the facts and circumstances. While the appellant have admittedly produced invoices and have got proof of payment, it is appropriate that the matter is remanded to original adjudicating authority to verify the correctness of the amounts claimed, proof of payment and sanction of refund. It is made clear that the delay in filing the refund claim is condoned.*

6.2. Further in the case of Suzlon Wind International Ltd. Vs. CCE(Appeals), Mangalore [2016-TIOL-2027-CESTAT-BANG], the Tribunal held that prayer for extension of time to claim refund can be made in the refund application itself. It is also held that the spirit of notification is such that a liberal approach would be adopted while considering the condonation of delay in filing the refund application.

7. I also find that both the authorities have not considered the reasons given by the appellant for filing the refund claims after the expiry of the period specified in the notification. Though the appellant has given justifiable reason explaining the delay in filing the refund claims, the same has not been considered by the lower authorities. Further I find that the Commissioner(Appeals) in his finding which is given without hearing the assessee, has observed that the appellants have filed these frivolous

appeals and wasting time of the departmental officers by making a mockery of the quasi judicial process by filing such frivolous appeals. Thus the Commissioner(Appeals) has condemned the appellant for filing these frivolous appeals. These observations by the learned Commissioner(Appeals) are made without any basis and without any material on record. These observations are made in violation of the principles of natural justice and are damaging the reputation of the appellant which the learned Commissioner has no right to make such observations without any material on record to justify these observations. Further the Commissioner(Appeals) has considered the entire claim under a wrong notification and without considering the grounds of appeal at all, passed such damaging observations which does not behore to the stature of the Commissioner rank officer. Further I find that the original authority as well as the Commissioner(Appeals) both have not considered the reasons for the delay in filing the claims and has not given any finding on the same. Whereas the Notification No.12/2013 dt. 01/07/2013 has specifically given the power to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise to condone the delay after being satisfied with the reasons given by the assessee. Further I find that the Tribunal in various decisions cited supra has observed that the prayer for extension of time to claim refunds should be granted in a liberal manner.

8. In view of the various decisions cited supra, I am of the view that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law and without affording the opportunity of hearing to the appellant. Therefore I set aside the impugned order and remand the case back to the original authority to decide the claims of refund of the appellant within a period of three months from the date of receipt of certified copy of this order. Further the original authority shall consider various decisions passed by the Tribunal wherein the Tribunal has held that liberal approach should be adopted for condoning the delay in filing the refund claim. Consequently, all the appeals are allowed by way of remand to the original authority. The original authority, after considering the decisions of the Tribunal, will pass a reasoned order after following the principles of natural justice and after affording an opportunity of hearing.

(Operative portion of the Order was pronounced
in Open Court on **17/09/2018**)

S.S GARG
JUDICIAL MEMBER

Raja...