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

Appeal(s) Involved:

ST/20599/2018-SM, ST/20600/2018-SM, ST/20601/2018-SM, ST/20602/2018-SM, ST/20603/2018-SM, ST/20604/2018-SM

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-061 to 066-17-18 dated 30/01/2018 passed by the Commissioner of Central Tax, Belgaum (Appeals)]

Srikanth Shet
2/60, Pixart, Laxmi Nilaya,
Panchaith Road, Hangalore
Kundapura - 576201
Karnataka — **Appellant(s)**

Versus

Commissioner Of Central Excise & Central Tax, Mangalore Commissionerate
7th Floor, Trade Center,
Bunts Hostel Road
Mangalore – 575 003
Karnataka — **Respondent(s)**

Appearance:

Mr. Rajesh Kumar, CA
#1010, 1st floor (Above Corp.Bank)
26th Main, 4th T Block, Jayanagar,
Bangalore – 560 041
Karnataka — For the Appellant

Mr. Gopa Kumar, AR — For the Respondent

Date of Hearing: 26/12/2018
Date of Decision: 26/12/2018

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

Final Order Nos. 21937-21942 / 2018

Per: S.S GARG

Appellants have filed these six appeals against the common impugned order dated 30.01.2018 passed by the Commissioner (Appeals) whereby he rejected the appeals of the appellant. Since the issue involved in all the six appeals is identical and there is a common impugned order, therefore all the six appeals are being disposed of by this common order. The details of all the appeals are given herein below:

Appeal No.	ST/20599 /2018	ST/20600 /2018	ST/20601 /2018	ST/20602 /2018	ST/20603 /2018	ST/20604 /2018
O-I-A No.	MLR-EXCUS-000-APP-061 to 066-17-18					
O-I-O No.	MLR-EXCUS-000-DUDP-ASC-GJU-038-16-17	MLR-EXCUS-000-DUDP-ASC-GJU-039-16-17	MLR-EXCUS-000-DUDP-ASC-GJU-040-16-17	MLR-EXCUS-000-DUDP-ASC-GJU-041-16-17	MLR-EXCUS-000-DUDP-ASC-GJU-086-16-17	MLR-EXCUS-000-DUDP-ASC-GJU-085-16-17
Period	Oct 2014 to Dec 2014	Jan 2015 to March 2015	April 2015 to June 2015	June 2015 to Sep 2015	Oct 2015 to Dec 2015	Jan 2016 to March 2016
Refund filed on	10.03.2016	10.03.2016	10.03.2016	10.03.2016	24.09.2016	24.09.2016
Refund amount	Rs. 1,17,420/-	Rs. 1,52,646/-	Rs. 1,10,352/-	Rs. 1,59,600/-	Rs. 1,95,300/-	Rs. 1,70,800/-

2. Briefly the facts of the present case are that the appellant is the holder of service tax registration number CHXPS1914FSD001 since 07.11.2014 for rendering taxable services under the category of 'Design services other than interior decoration and fashion design' in terms of the provisions of the Finance Act, 1994. The appellant has filed a refund claims as above in Form-A in terms of Notification No. 27/2012-CE (N.T) dated 18.06.2012, issued under Rule 5 of the Cenvat Credit Rules, 2004. The appellant had filed the said refund claims upon claiming the export of service without payment of service tax for unutilized cenvat credit on input/input services used in providing output services as the exporter claimed that he is unable to utilize the said cenvat credit for payment of service tax. The appellant's

refund claims were rejected under Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of Finance Act, 1994 read with notification no. 27/2012-CE (N.T) dated 18.06.2012 issued under Rule 5 of the Cenvat Credit Rules, 2004 by the Assistant Commissioner of Central Excise and Service Tax, Udupi Division, Mangalore for failing to provide credible evidences to establish that the refund claims were filed in time, as per the conditions for determining of time limit in terms of clause 3(b)(ii) of Notification No. 27/2012-CE (N.T) dated 18.06.2012., as the proofs of receipt of payments in convertible foreign exchange were not furnished and for the reason that the conditions relating to export of services in terms of Rule 6A of Service Tax Rules, 1994 were not satisfied as the foreign inward remittance certificates for the said transactions were not submitted and also for not producing bank realization certificate as per the requirement of para 3(d) of Notification No. 27/2012-CE (NT) dated 18.06.2012 and for non-correlation of the same with the bank account statements submitted.

Aggrieved by the Order-in-Original appellant filed appeals before the Commissioner (A) who rejected the said appeals.

3. Heard both the parties and perused the records.

4. Learned consultant appearing for the appellant submitted that there are two issues involved in present case and the first issue is whether the refund application is made within one year from the relevant date and second whether the receipt is in convertible foreign exchange. As far as first

issue of limitation is concerned, the learned consultant submitted that as per the decision of the Karnataka High Court in the case of ***mPortal India Wireless Solutions P. Ltd. Vs. CST, Bangalore – 2012 (27) S.T.R. 134 (Kar.)*** it is held that insofar as the refund of cenvat credit is concerned, the period of limitation under Section 11B does not apply for refund of accumulated cenvat credit. Therefore, bar of limitation cannot be a ground to refuse cenvat credit to the assessee. He also submitted that the Larger Bench of the Tribunal in the case of ***CCE & ST Vs. Span Infotech India Pvt. Ltd. – 2018-TIOL-516-CESTAT-BANG.-LB*** held that the due date should be counted from the last date of the quarter in which the consideration is received for the period prior to as well as post amendment carried out in 2016. He further submitted that as far as receipt of money in convertible foreign exchange is concerned, the impugned order has been passed relying upon the decision of the Tribunal in the case of ***Suprasesh General Insurance Services & Brokers P. Ltd. Vs. CST, Chennai - 2016 (41) S.T.R. 34 (Mad.).*** He also relied upon various decisions wherein the receipt was in Indian currency and it was held to be receipt in convertible foreign exchange and the benefit of export of service was granted. Following are such decisions:

a. *Sun Area Real Estate Pvt. Ltd. V. Commissioner – 2015 (39) S.T.R. 897 (Tri.)*
b. *Commissioner V. Balaji Telefilms Ltd. – 2016 (43) S.T.R. 98 (Tri.)*
c. *Mitsubishi Heavy Industries India Pvt. Ltd. Vs. CCE – 2017 (5) GSTL 321 (Tri.)*
d. *Commissioner of Central Excise, Rajkot V. Shelpan Exports – 2010 (19) S.T.R. 337 (Tri.-Ahmd.)*

e. *National Engineering Industries Ltd. V. Commissioner of Central Excise, Jaipur – 2008 (11) S.T.R. 156 (Tri.-Del.)*

f. *Nipuna Services Ltd. V. Commissioner of Central Excise, Customs & Service Tax – 2009 (14) S.T.R. 706 (Tri.-Bang.)*

4.1. He further submitted that the Revenue in the subsequent refund claims has sanctioned the refunds considering the transaction as exports and the said orders are not appealed against.

5. On the other hand the learned AR defended the impugned order and submitted that the appellants have not complied with the time limit as prescribed in the Notification 27/2012 CE dated 18.06.2012. He further submitted that as per the Larger Bench of the CESTAT in the case of ***CCE, Cus. & ST, Bangalore Vs. Span Infotech (India) Pvt. Ltd. reported in 2018 (12) G.S.T.L. 200 (Tri.-LB)*** wherein it has been held that Section 11B applies in the case of refund under Rule 5 and that the time limit of one year shall be reckoned from the end of the quarter in which the foreign exchange has been realized. He further submitted that in the present case the appellants have neither produced FIRC for proof of receipt in convertible foreign currency nor the invoices pertaining to export of services for determining the time limit. He also submitted that non production of FIRC is the ground for rejection of the refund. He relied upon the following decisions:

a. *CCE, Cus. & ST, Bangalore Vs. Span Infotech (India) Pvt. Ltd. – 2018 (12) G.S.T.L. 200 (Tri.-LB)*

b. *Kobelco Machinery India Pvt. Ltd. Vs. CST, Kolkata – 2017 (3) G.S.T.L. 260 (Tri.-Kolkata)*

c. *Sun-Area Real Estate Pvt. Ltd. Vs. CST, Mumbai-I – 2015 (39) S.T.R. 897 (Tri.-Mumbai)*

d. *Commr. of GST, Mumbai Central Vs. Everstone Capital Advisors Pvt. Ltd. – 2018 (12) G.S.T.L. 328 (Tri.-Mumbai)*

e. *Mitsubishi Heavy Industries India Pvt. Ltd. Vs. CCE, Delhi-II – 2017 (5) G.S.T.L. 321 (Tri.-Del.)*

6. After considering the submissions of both the parties and perusal of the material on record and the various decisions relied upon by both sides, I find that the refund has been rejected by the impugned order on the ground that the appellants have not submitted Foreign Inward Remittance Certificate for the said transaction and they have also not produced the invoices, bills or challans raised in respect of exports and also received money in Indian rupee in his ICICI Bank account. Further I find that the Commissioner (Appeals) has observed that the appellant had not produced bank realization certificate as required. Further I find that the Commissioner (Appeals) has relied upon the **Suprasesh General Insurance Services & Brokers P. Ltd.** which has been set aside by the High Court of Madras as reported in 2016 (41) S.T.R. 34 (Mad.). Further I find that as far as limitation is concerned, the Larger Bench of this Tribunal in the case of **Span Infotech (India) Pvt. Ltd.** cited supra has held in para 13 as under:

> *"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."

6.1. Further I find that the appellant has produced before me non-objection certificate for issuance of FIRC issued by Indus Inc Bank wherein remittance had been confirmed and all details regarding the remitter name, beneficiary name and purpose of remittance have been given. But these documents were not made available before both the authorities below. Therefore, both the authorities have held that appellants have not produced any credible evidence to establish that they have received the payment in convertible foreign exchange. Further I find that the appellants have also produced a certificate issued by the appellants' ICICI Bank dated 03.08.2016 wherein they have certified that all the credits of Mr. Srikanth Shet in SB Account No. 107601501359 is credited by the authorized dealer M/s. Payoneer in Indian Rupees only. Further I find that for the subsequent period, the refunds have

been sanctioned by the Revenue by considering these transactions as export of service and these decisions have also been placed on record and they have not been appealed against and therefore has attained finality. In view of my discussion above, I am of the considered view that these cases need to be remanded back to the original authority to examine the period of limitation in the light of the Larger Bench decision in the case of **Span Infotech (India) Pvt. Ltd.** cited supra as well as the receipt of foreign exchange in view of the certificates issued by Indus Inc Bank and ICICI Bank and also the fact that in subsequent decision, the Revenue has allowed refund considering the transaction as export. Consequently, all the appeals are allowed by way of remand to the original authority to pass a *de novo* order after following the principles of natural justice and affording appropriate opportunity of hearing to the appellants.

(Operative portion of the Order was pronounced
in Open Court on **26/12/2018**)

(S.S GARG)
JUDICIAL MEMBER

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