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

Appeal(s) Involved:

ST/20699/2018-SM

[Arising out of Order-in-Appeal No. 401-402-2018 dated 12/04/2018 passed by Principal Commissioner of Central Tax, Bangalore East , BANGALORE-I(Appeal)]

Kongsberg Digital Software And Services Pvt. Ltd.
(known As Kongsberg Software And Services Pvt Ltd)no 139/26,1st Floor,solitare,amarajyothi Layout, Domlur Kormangala Intermediate Ring Road,bangalore
BANGALORE - 560071
KARNATAKA

Appellant(s)

Versus

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

Respondent(s)

Appearance:

Shri Akbar Basha, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th Main, 4th T Block, Jayanagar, Bangalore
Bangalore - 560041
Karnataka

For the Appellant

Smt. Kavita Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 01/01/2019
Date of Decision: 01/01/2019

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

Final Order No. 20001 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 12/04/2018 passed by the Commissioner(Appeals) whereby the

Commissioner(Appeals) has rejected the refund of the appellant on time bar.

2. Briefly the facts of the present case are that the appellant is registered as a service provider under the category of Information Technology Software Services. They had accumulated CENVAT credit and filed refund application on 03/02/2014 in terms of Rule 5 of the CENVAT Credit Rules, 2004 for the period October 2012 to December 2012 read with Notification No.27/2012-CE(NT) dt. 18/06/2012 along with all the documents. Thereafter a show-cause notice was issued to the appellant proposing to reject the refund claim. Thereafter, after following the due process, the original authority rejected the refund claim. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who also rejected the refund claim by holding that the claim was filed one year after end of the quarter. Aggrieved by the Order-in-Appeal, appellant filed appeal before the Tribunal wherein the CESTAT remanded the case back to the original authority after holding that the time limit of one year should be counted from the receipt of foreign exchange. Thereafter in pursuance of the CESTAT order, appellant filed a letter to process the refund claim but the adjudicating officer rejected the refund claim again on time bar. Appellant challenged the Order-in-Original before the Commissioner(Appeals) who rejected the claim on the ground that the same has been filed beyond the period of one year from the end of the quarter.

3. Heard both sides and perused records.

4. The learned consultant appearing for the appellant submitted that the impugned order rejecting the refund claim on time bar is not sustainable in law in view of the Larger Bench decision of the CESTAT in the case of CCE&ST, Bangalore Vs. Span Infotech India Pvt. Ltd. [2018-TIOL-516-CESTAT-BANG-LB]. He further submitted that the Larger Bench was constituted to decide from which date the period of limitation should start and the Larger Bench in the case cited above has held as under:-

> ***11.*** *The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give its meaning such that the objective of the provisions; i.e. to grant refund of unutilized Cenvat credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Services Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh High Court has held that the date of receipt of consideration may be taken as relevant date in the case of Hyundai Motors [2015 (39) S.T.R. 984 (A.P.)].*
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> ***12.*** *The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra), has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.*
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> ***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.*

5. He further submitted that in view of the Larger Bench decision, the refund claim filed by the appellant is within the period of limitation because one year should be counted from the last day of the quarter in which the foreign exchange was received considering the claims to be on quarterly basis. He also submitted that the appellants received the proceeds for the last export invoice on 25/02/2013 and the last date to file the refund claim should be one year from 31/03/2013 whereas in the present case the appellant filed refund claim on 03/02/2014 and therefore in terms of the decision of Larger Bench in Span Infotech India Pvt. Ltd. case, the refund claim is filed within the due date.

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

7. After hearing both sides and perusal of the Larger Bench decision of this Tribunal, I find that as per the Larger Bench decision of the Tribunal, the period of one year should be counted from the last date of the quarter in which the FIRCs received and in the present case, the FIRCs received on 25/02/2013 and the last date to file the refund claim was up to 31/03/2014 and the refund claim was filed on 03/02/2014 which is very

much within the period of one year as per the judgment of the Larger Bench. In view of this, I am of the view that the issue is squarely covered by the decision of the Larger Bench and therefore by following the ratio of the Larger Bench decision, I allow the appeal of the appellant by holding that the refund claim is within the time. Consequently, the appeal is allowed and the case is remanded back to the original authority for the purpose of computation of the claim and sanctioning of the same which should be done within a period of two months from the date of receipt of this order.

(Operative portion of the Order was pronounced
in Open Court on **01/01/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...