CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20118 of 2021

[Arising out of Order-in-Appeal No. 387/2020 dated 28/08/2020 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

Simplilearn Solutions Pvt Ltd
53/1C 24th Main 2nd Sector HSR Layout
BENGALURU
KARNATAKA
560102

Appellant(s)

VERSUS

Commissioner Of Central Tax, Bengaluru South Commissionerate
5th Floor, C.R. Buildings, PB No-5400,
Queens Road
Bangalore
Karnataka
560001

Respondent(s)

Appearance:

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

For the Appellant

Shri P. Gopakumar, Addl. Commissioner(AR)

For the Respondent

CORAM:
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

Final Order No. 20771 /2021

Date of Hearing: 27/09/2021

Date of Decision:30/09/2021

Per : P. DINESHA

Brief facts leading to the present dispute as canvassed, inter-alia, are as under:-

A refund claim amounting to Rs.1,22,88,612/- filed for the period July 2016 to September 2016 under Rule 5 of CENVAT Credit Rules, 2004 (CCR, for short) read with Notification No.27/2012 CE(NT) and in pursuance of para 2(h) of the said Notification; that appellant included the credit amount of Rs.30,95,815/- which was credited vide master journal voucher No.611 dt. 30/09/2016; that the appellant had duly debited the refund claim amount in ST-3 returns in April 2017 to June 2017, for the refund claim period of July 2016 to September 2016; that an amount of Rs.22,69,045/- was sanctioned to the appellant vide Order-in-Original No.36/2018-19 dt. 08/06/2016; that balance amounting to Rs.1,00,19,567/- was rejected on account of not having nexus with the output service; that appellant preferred an appeal before the learned Commissioner(Appeals) which vide Order-in-Appeal No.787/2018 dt. 14/08/2018 remanded the case for re-verification; that in pursuance of the De-novo proceedings, learned adjudicating authority sanctioned refund amounting to Rs.44,03,405/- vide Order-in-Original No.129/2018-19 dt. 12/03/2019 and rejected an amount of Rs.56,16,162/-; that appellant filed an appeal contesting refund of Rs.11,17,246/- (proportionate refund claim for CENVAT Credit of Rs.30,95,815/-); that OIO rejected the refund claim on the ground that the said credit amounting to Rs.30,95,815/- did not pertain to the present claim period i.e. July 2016 to September 2016; that excess debit of Rs.30,95,815/- for April 2014 to June 2014 was recredited during July 2016 to September 2016; that appellant had already availed the said amount for the quarter April 2014 to June 2014 and same cannot be considered during refund claim of July 2016 to September 2016; that the amount of Rs.30,95,815/- has already been availed by the appellant in April 2014 to June 2014, the same cannot be factored in the current refund claim; that appellant failed to furnish to furnish any evidence that they have recredited Rs.30,95,815/- to their cenvat credit account; intentionally credit the inadmissible cenvat credit of Rs.30,95,815/- which was originally rejected for April 2014 to June

2014; that subsequently claimed as refund for the present period July 2016 to September 2016 after a time lapse of 2 years and is barred from claiming back in the Cenvat Credit account in terms of Rule 5 of CCR, 2004 etc.

2. Heard Shri Akbar Basha, learned consultant for the appellant and Shri P. Gopakumar, learned Additional Commissioner(AR) for the Revenue and I have gone through the supporting documents placed on record.

3.1. The appellant's first refund claim was filed on 31/03/2015 for the period April 2014 to June 2014 wherein Rs.1,37,69,365/- was claimed. In the Order-in-original dt. 21/02/2018, the learned adjudicating authority has adopted the correct refund amount at Rs.1,06,73,550/- which was based on the certification by the appellant's statutory auditor. This fact which is recorded in the said Order-in-Original has become final since appeal was filed against the same.

3.2. In the subsequent refund claim, the appellant has maintained that the differential amount was recredited to the cenvat account vide general voucher No.611 dt. 30.09.2016. But it appears that the appellant has not supported its above claim with any documentary evidence. In the impugned order, the Commissioner (Appeals) has therefore observed that the appellant had failed to furnish any evidence. The only way out is therefore for the appellant to establish its case before the adjudicating authority with duly supporting documents.

4. In view of the above, I am of the considered opinion that the appellant should furnish the necessary supporting documents before the lower authorities who shall examine the same in the light of the

appellant's claim for refund. Accordingly, the impugned order is set aside the and the matter is remanded to the file of the adjudicating authority before whom the appellant shall furnish all necessary supporting documents for verification, who then shall pass a speaking order in accordance with law. Appeal is allowed by way of remand.

(Order was pronounced
in Open Court on **30/09/2021**)

(P. DINESHA)
JUDICIAL MEMBER

Raja...