

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21772 of 2017

(Arising out of Order-in-Appeal No. 290/2017-CT dated 03/10/2017
passed by Commissioner of Central Tax (Appeals-II), Bangalore)

Carclo Technical Plastics Pvt Ltd

No 27A(2), KIADB Industrial Area
Doddaballapur
BANGALORE - 561203
KARNATAKA

Appellant(s)

VERSUS

**Commissioner Of Central Tax,
Bangalore North**

No-59, HMT Bhawan
Ground Floor, Bellary Road
BANGALORE - 560032
KARNATAKA

Respondent(s)

APPEARANCE:

Shri Ravi Raghavan, Advocate for the Appellant

Shri P. Rama Holla, Superintendent(AR) for the respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER

HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order No. 20068 / 2022

Date of Hearing: 02/03/2022

Date of Decision: 02/03/2022

Per : ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the refund claim has been dismissed as time barred.

2. The facts of the case are that the appellant is 100% EOU and avails cenvat credit on service tax paid on input services which were used in the manufacture of goods which have been exported by the

appellant. The input service credit remained unutilised and therefore the appellant filed refund claim under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE(NT) dt. 18/06/2012 for the period April 2012 to June 2012 on 04/02/2013 before the Assistant Commissioner of Service Tax, although the last date of filing return was 31/03/2013. But on 03/04/2013, the said refund claim was returned by the Assistant Commissioner of Service Tax on the pretext that the same is required to be filed before the jurisdictional Assistant Commissioner of Central Excise, which was filed by the appellant before learned Assistant Commissioner, Central Excise on 30/10/2013. The said refund claim was rejected being time-barred. Therefore, the appellant is before us by way of this appeal.

3. Learned counsel for the appellant submits that initially, the appellant filed refund claim in time, but the same was returned holding that the same has been filed before wrong forum after the expiry of due date of filing refund claim; in that situation, it cannot be said that the appellant's claim is barred by limitation as held by this Tribunal in the case of Anurag Enterprises Vs. Commissioner [2019(8) TMI 1299 - CESTAT Allahabad]. He also took the support of the decision of the Hon'ble Gujarat High Court in the case of CCE Vs. AIA engineering Ltd. [2011(21) STR 367 (Guj.)].

4. On the other hand, the learned AR supported the impugned order and submitted that as and when the refund claim has been returned to them, the appellant was required to file the refund claim immediately before the Assistant Commissioner, Central Excise. He also submitted that the refund claim filed by the appellant is modified one and having a different period which has been filed beyond the time limit; therefore, the same is rightly held as time-barred.

5. Heard the parties and considered the submissions.

6.1. The facts of the case are not in dispute. The appellant filed refund claim before the Assistant Commissioner of Service Tax on 04/02/2013 which was well within the time and the Assistant Commissioner of Service Tax returned the refund claim on 03/04/2013 after the last date of filing of refund claim. In fact, the learned Assistant Commissioner of Service Tax could have transferred the application of refund claim to the Assistant Commissioner of Central Excise itself, if that could have been done, the refund claim would not have been held time barred. Therefore, relying on the decision in the case of Anurag Enterprises (supra) wherein this Tribunal held as under:-

5. We agree with the above stand of the assessed. The appellant having filed the refund claims with their jurisdictional Service Tax Authorities under a bona fide belief that the claims have to be dealt with by him, and if the concerned office was not having jurisdiction, the reasonable course of action on the part of the officer was to transfer the claim to the relevant office having jurisdiction to decide the same, under intimation to the assessee. Examining from another angle also, if the appellant is now required to file a fresh refund claim, the same would not be hit by the bar of limitation, inasmuch as, the period during which the same were pending before wrong forum and were under litigation has to be excluded.

and the Hon'ble High Court of Gujarat in the case of AIA Engineering Ltd. (supra), wherein Hon'ble High Court was of the view that "the application of refund was filed within time limit and which was returned by the authorities and the respondent filed the same after a lapse of time and as such, it is not barred by limitation".

6.2. We hold that refund claim filed by the appellant is in time.

7. As both the authorities have not dealt with the merits of the claim of refund, in these circumstances, we set aside the impugned order and remand the matter to the adjudicating authority to entertain the claim on merits.

8. In these terms, appeal is allowed by way of remand.

(Pronounced in open court on **02/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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