**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**CHANDIGARH**
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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.60361 of 2021 [SM]**

[Arising out of Order-in-Appeal No.11/ST/CGST-APPEAL-GURUGRAM/SG/2021-22 dated 27.05.2021 passed by the Commissioner of Central Goods and Service Tax (Appeals), Gurugram]

**M/s G 4 S Secure Solutions India Pvt. Ltd.** : **Appellant**
5th Floor, Tower-A, Unitech Cyber Park,
Sector-39, Gurugram, Haryana-122002

*VERSUS*

**The Commissioner of Central Goods and Service, Gurugram** : **Respondent**
GST Bhavan, Plot No.36-37, Sector-32,
Gurugram, Haryana 122001

**APPEARANCE:**
Ms. Krati Singh and Shri Aman Singh, Advocates for the Appellant
Shri Yashpal Singh, Authorised Representative for the Respondent

**CORAM: HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60531/2024**

DATE OF HEARING: 02.09.2024
DATE OF DECISION: 19.09.2024

***PER: P. ANJANI KUMAR***

M/s G 4 S Secure Solutions India Pvt. Ltd. the appellants, are engaged in provision of service of Security Services, Business Support Services etc; they have filed service tax Returns in Form ST-3 on 15.08.2017 for the period April 2017 to June 2017; appellant filed a revised ST-3 Returns on 28.09.2017 as per which the appellants claim that they are eligible to avail additional CENVAT credit of Rs.43,06,900/-; the appellants claim the refund of the same under Section 142 (9) (b) of CGST Act, 2017 on 06.06.2019; the Original Authority rejected the refund vide order dated 26.11.2020; on an appeal filed by the appellants,
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Commissioner (Appeals) vide impugned order dated 27.05.2021 communicated on 09.06.2021. On an appeal preferred by the appellants, Single Member of this Bench, vide Interim Order dated 24.11.2021, directed that the issue, as to whether the order passed under Section 142 of the CGST Act, 2017, is appealable before CESTAT is under consideration by the Larger Bench in the case of Bosch Electrical Drive India Pvt. Ltd. and the same may be put up for hearing after the decision of the Larger Bench; accordingly, the appeal is placed again. Hence, this appeal.

2. Ms. Krati Singh, learned Counsel for the appellant, submits that Larger Bench of the CESTAT, Chennai has since pronounced decision in the above referred case vide Interim Order No.40021/2023 dated 21.12.2023; Section 142 of the CGST Act is part of Chapter XX providing scheme of transitional provision from the erstwhile service tax and excise regime to the GST regime; since Section 142 is a miscellaneous transitional provision, providing various instances of refund admissible to the tax payer due to migration from the erstwhile regime; Section 142(3) of the CGST Act allows the refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law. She takes the Bench through the definition of the expression "The Existing Law" as per Section 2(48) of CGST Act and submits that, accordingly, every claim of refund after 01.07.2017 has to be disposed of in accordance with the provisions of the existing law i.e Chapter-V of the Finance Act and Central Excise Act. She submits that the Larger Bench in the case of M/s Bosch analyzed the provisions of Section 142 (6) and held that since the refund is to be disposed of in accordance with the provisions of the existing law,

the appellate mechanism under the existing law shall be applicable and hence, the appeal is maintainable before CESTAT.

3. Learned Counsel further submits that the impugned refund is filed under Section 142 (9) (b) for incremental CENVAT credit arising out of revised service tax Returns; the facts of the case of M/s Bosch is squarely applicable; there is no material difference between Section 142 (3) and 142(9) of CGST Act, 2017. She relies on the following cases in the defense of her arguments.

- Punjab National Bank vs. Commissioner of Central Tax, Bangalore North 2021 (7) TMI 326 - CESTAT BANGALORE.
- Commissioner, Central Tax, Goods & Service Tax, Delhi East vs. CH2M Hill (India) Pvt. Limited 2022 (6) TMI 711 - CESTAT NEW DELHI.
- Punjab National Bank vs. Commissioner, Central Goods and Service Tax, Central Excise, Jaipur, Rajasthan 2022 (5) TMI 652-CESTAT NEW DELHI.
- Consulting Engineers Group Ltd. vs Commissioner of Central Excise & CGST, Jaipur-1 2022 (12) TMI 658 - CESTAT NEW DELHI.
- Wave One Private Limited vs Commissioner, Office of The Commissioner (Appeals-I), Central Goods and Service Tax and Central Excise, Delhi 2023 (11) TMI 1078-CESTAT NEW DELHI.
- NIIT Limited vs Commissioner, CGST-Delhi East 2023 (1) TMI 392- CESTAT NEW DELHI.
- USV Private Limited vs. Commissioner of Central Excise & ST, Daman 2023 (2) TMI 230-CESTAT AHMEDABAD.
- Lifecell International Pvt. Ltd. vs. Commissioner of GST & Central Excise, Chennai 2023 (4) TMI 973
- Doowon Automotive Systems India Pvt. Ltd. vs. Commissioner of GST & Central Excise, Chenna- 2022 (5) TMI 984-CESTAT CHENNAI
- Jai Mateshwaari Steels Pvt Ltd vs Commissioner, CGST-Dehradun - 2022 (3) TMI 49 - CESTAT NEW DELHI
- Supreme Court at 2008 (223) E.L.T. A170 (S.C.)]. 18. Rama Industries vs. CCE, Chandigarh-2009-TIOL-100-HC-P&H.
- Slovak India Trading Co. Pvt.Ltd.-2008 (10) STR 101 [maintained in Supreme Court at 2008 (223) E.L.T. A170 (S.C.)].

- Rama Industries vs. CCE, Chandigarh-2009-TIOL-100-HC-P&H.
- The Commissioner, Goods and Service Tax Commissionerate, vs. Shree Krishna Paper Mills and Industries Ltd. and Ors. 2019 (12) TMI 1348 (P&H).
- Bangalore Cables P. Ltd. vs. CCE - 2017 (347) E.L.T. 100 (Tri. Bang.).

3. Shri Yashpal Singh, learned Authorized Representative for the Department, reiterates the findings of the impugned order; takes the Bench through the provisions of the law and the decision of the Larger Bench in the case of Bosch Electrical Drive India (supra) and the decision of Hon'ble High Court of Jharkhand in the case of Rungta Mines Ltd. – 2022 (67) GSTL 180 (Jhar.); he submits that the impugned order is in consonance with the above cited two cases. He submits that by the ratio of the above cases, it is evident that all the claims under section 142 (3) are to be disposed of in accordance with the existing law, whereas, in the instant case, the appellant filed the refund claim under Section 142(9) on 06.06.2019 whereas the return was revised on 28.09.2017. The said refund claim was rejected by the refund sanctioning authority on ground of being time barred and the appellant in the instant appeal claimed that any of the rules or sections under the existing law cannot govern other than Sub-section (2) of section 11B of Central Excise Act which is in contrary with the provisions of Section 143(3) of CGST Act, 2017.

4. Heard both sides and perused the records of the case. I find that in the instant case, the refund claim is filed under Section 142 (9) (p) of the CGST Act which reads as under:

> "142(9)
> (a) …
> (b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such

> revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act."

5. I find that the word "existing law" has been defined under Section 2(48) of the CGST Act, 2017 as under:

> "(48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation."

6. I find that the Larger Bench while answering the reference as to whether the appeal is maintainable before the CGST Appellate Tribunal and held that the appellant is not entitled to file an appeal against the order passed under Section 142 of the CGST Act, 2017 before the Appellate Tribunal under Section 112 of the CGST Act before the Appellate Tribunal, as Section 112 of the CGST Act allows appeal against the order passed under Section 107 or Section 108 of the CGST Act. Therefore, the Larger Bench came to the conclusion that appeal against the order passed under Section 142 (6) of the CGST Act is maintainable before this Bench. I find that as submitted by the learned Counsel for the appellants, the provisions of Section 142 (9) are *parimateria* with those of Section 146. If an interpretation that appeals against orders passed under Section 142 (9) cannot be filed before this Bench, the appellants would be devoid of any opportunity to prefer an appeal. I find that as

both the sections refer to the existing law, the appeals are maintainable before this Bench.

7. I find that though the learned Authorized Representative for the Department argues on the issue of time bar and other technical issues, I find that the Original Authority and the Appellate Authority based the rejection on the maintainability of the proceedings and the appeal under Section 142 (9) of CGST Act, 2017. I find that Tribunal has decided a case involving identical facts. Tribunal held in the case of Punjab National Bank (supra) that:

> 5. After considering the submissions of both the parties and perusal of the material on record, I find that initially the appellant filed the ST-3 returns on 31-8-2017 for the period from April, 2017 to June, 2017 and utilized the entire Cenvat credit and the closing balance was 'nil' and in the transitional return in Form GST TRAN-1, he filed the 'nil' value and did not carry forward any unutilized balance of Cenvat credit. Subsequently, he realized that he did not avail the Cenvat credit and KKC totally amounting to Rs. 16,50,384/- (Rupees Sixteen Lakhs Fifty Thousand Three Hundred and Eighty Four only) and filed a revised return in view of Section 142(9)(b) of CGST Act, 2017 but the original authority issued to the appellant, a show cause notice proposing to deny the refund for non-submission of documents and on the ground of limitation under Section 11B of the Central Excise Act. Further, I find that after the reply to the show cause notice, appellant reduced the claim of Cenvat credit for refund to the tune of Rs. 15,74,893/- (Rupees Fifteen Lakhs Seventy Four Thousand Eight Hundred and Ninety Three only) by surrendering some amount of Cenvat credit and KKC and restricted the refund to Rs. 15,74,893/- (Rupees Fifteen Lakhs Seventy Four Thousand Eight Hundred and Ninety Three only). Further I find that on identical issue the CESTAT, New Delhi in the case of the appellant itself has granted the refund to the appellant subject to verification of input invoices and calculation of the same. Further I find that both the authorities have not considered the submissions of the appellant that

primarily the appellant is claiming the refund of Cenvat credit in terms of Section 142(9)(b) of the CGST Act, 2017. Both the authorities have held that refund is time-barred in view of Section 11B of the Central Excise Act, 1944. Here it is relevant to reproduce the said provision of Section 142(9)(b) of CGST Act, 2017 which is reproduced hereinbelow for reference.

"(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or Cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act."

5.1 Further I find that it is a settled legal position that if there is a conflict between the substantive provision of the statute and the Rules framed thereunder then it is the statute which will have a overriding effect and in the present case Section 142(9)(b) has a overriding effect over Section 11B of the Central Excise Act, 1944. If I analyze the provision of Section 142(9)(b) of the CGST Act which provides as follows :

(a) Where return filed under the existing law is revised after the appointed day but within the time limit prescribed for revision of return under the existing law;

(b) Pursuant to filing of revised return, when closing balance of Cenvat credit increases as compare to closing balance of Cenvat credit in original return;

(c) In this case the registered person is required to file refund for the differential amount;

(d) The differential amount shall be refunded to registered person in cash as per provisions of existing law

(e) Notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944.

5.2 Further, I find that the words "notwithstanding anything contrary contain in said law" means that the provisions of this Section will prevail over provisions of existing law except provision of Section 11B(2) of Central Excise Act, 1944. The Section 11B(2) of Central Excise Act, 1944 contains provisions relating to

> granting of refund in case of unjust enrichment. Thus, as far as conditions of Section 142(9)(b) of CGST Act, 2017 is concerned, the appellant has fulfilled the said conditions and hence is entitled for refund. As far as new ground taken by the Learned Commissioner that the appellant has filed the revised return late is not valid because this ground has not been raised either in the show cause notice or in the Order-in-Original and hence the Commissioner (Appeals) is not justified to invoke a new ground to reject the refund claim. Further, I find that it is a settled law that whenever two options are available, the assessee may choose the option which is more beneficial for them and in the present case the assessee/appellant has chosen to file the refund claim under Section 142(9)(b) of CGST Act, 2017 which has a overriding effect over Section 11B of Central Excise Act, 1944. The appellant did not choose to carry forward the credit in TRAN-1 and preferred to claim cash refund as provided under Section 142(9)(b) of CGST Act, 2017. Further, I find that both the authorities have held that the appellant failed to furnish the original invoices which are necessary for verification of the claim of refund of the appellant.
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> 6. In view of my discussion above, I set aside the impugned order holding that appellant is entitled for cash refund in view of Section 142(9)(b) of the CGST Act but for the purpose of verification of original invoices/documents, I remand the case back to the original authority for the limited purpose of verification of the invoices/documents. The original authority will grant the refund after verification of the document and after following the principles of natural justice. The original authority will decide within a period of three months from the receipt of the certified copy of this order. The appeal is accordingly disposed of by way of remand.

8. In deference to the above, I set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 19/09/2024)

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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