

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 42172 of 2018

(Arising out of Order-in-Appeal No. 378/2018 (CTA-II) dated 30.07.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Global Analytics India Pvt. Ltd., : **Appellant**
Pacifia Tech Parl. 101A, 1st Floor,
23, Old Mahabalipuram Road, Navalur,
Chennai – 603 103

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

WITH

Service Tax Appeal No. 42435 of 2018

(Arising out of Order-in-Appeal No. 440/2018 (CTA-II) dated 28.09.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Global Analytics India Pvt. Ltd., : **Appellant**
Pacifia Tech Parl. 101A, 1st Floor,
23, Old Mahabalipuram Road, Navalur,
Chennai – 603 103

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri. Rajaram R., Advocate for the Appellant

Shri. S. Govindarajan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 40942-40943 / 2019

DATE OF HEARING: 27.06.2019

DATE OF DECISION: **22.07.2019**

By this appeal, the assessee is questioning the correctness of the rejection of its refund claims made under Rule 5 of the CENVAT Credit Rules, 2004.

2. When the matter was taken up for hearing, Shri. Rajaram R., Ld. Advocate, appeared for the assessee and Shri. S. Govindarajan, Ld. AR, appeared for the Revenue.

3.1 It is the case of the assessee that the assessee is engaged in providing data analytics and information technology services to its customers located outside India and by virtue of having fulfilled the conditions as per Rule 6A of the Service Tax Rules, 2004, it assumed that the output services qualified to be export of services. Accordingly, in order to avail input services and CENVAT Credit of Service Tax, it made applications for refund of Service Tax and Krishi Kalyan Cess paid on input services under Rule 5 *ibid* and also took shelter under Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012 (for the periods from January 2017 to March 2017 and April 2017 to June 2017).

3.2 The Adjudicating Authority vide Orders-in-Original dated 28.03.2018 and 16.04.2018, after considering the explanation of the appellant, however, rejected the refund claims *inter alia* on the grounds that the assessee had not fulfilled the primary condition of debiting equal amount of CENVAT Credit under Rule 5 *ibid* at the time of filing refund claim and that since the appellant had carried forward in TRAN-1 under GST, refund need not be granted as per Section 142 (3) of the C.G.S.T. Act, 2017.

3.3 The appellant seriously pursued the matter by filing appeals against the orders of rejection vide Orders-in-Original (*supra*), but however, the Commissioner of

G.S.T. and Central Excise (Appeals-II), Chennai, having rejected the appellant's claims vide impugned Orders-in-Appeal Nos. 440/2018 (CTA-II) dated 28.09.2018 and 378/2018 (CTA-II) dated 30.07.2018, the present appeals are filed by the assessee.

4.1 Ld. Advocate for the appellant, reiterating the arguments advanced before the lower authorities, also contended as under :

- (i) The authorities below did not consider in proper perspective the explanation of the assessee in their respective orders;
- (ii) During the period in dispute, G.S.T. was introduced and hence, it was the migration/transition by the introduction of which filing of Service Tax return (ST-3) was done away with and hence, there was no way the appellant could debit and reflect the same in its ST-3 return;
- (iii) The condition at paragraph 2(h) of Notification No. 27/2012 (*supra*) was applicable only during the period prior to the G.S.T. regime since G.S.T. has done away with the filing of ST-3 return;
- (iv) The appellant had reversed the equal amount of CENVAT Credit from its Books of Account, which was also submitted as proof along with the refund claim;
- (v) There was no provision in ACES system to debit the value of refund claim in the CENVAT balance during the relevant period;
- (vi) There being no Service Tax return required to be filed, it had reversed the refund from its GSTR-3B filed for the month of April 2018;

4.2 Ld. Advocate also referred to the C.B.I.C. Circular No. 58/32/2018-G.S.T. dated 04.09.2018 wherein the Board itself had clarified that the reversal of credit in GSTR-3B amounts to non-availment of credit. He relied

on the decision of the Allahabad Bench of the Tribunal in the case of ***Commissioner of Service Tax, Noida vs. M/s. Kiwi Technologies India Pvt. Ltd. reported in 2018 (2) T.M.I. 689 – CESTAT Allahabad*** and also relied on the following orders of the Tribunal :

- (i) *Inductoterm Group Pune P. Ltd. Vs. C.S.T., Pune-I – 2017 (8) T.M.I. 218 – CESTAT Mumbai;*
- (ii) *Sandoz Pvt. Ltd. Vs. C.C.E., Belapur – 2015 (10) T.M.I. 882 – CESTAT Mumbai;*
- (iii) *Kopran Ltd. Vs. C.C.E., Mumbai-II – 2016 (11) T.M.I. 419 – CESTAT Mumbai;*
- (iv) *Kellogg and Andelson Management Service Pvt. Ltd. Vs. C.S.T., Chennai – 2018-TIOL-1774-CESTAT-MAD;*

5. *Per contra*, Ld. AR for the Revenue, opposing the contentions of the Ld. Advocate, however supported the findings of the lower authorities. He contended that the condition at paragraph 2(h) is a mandatory one and by non-fulfilment of the same, the appellant would become ineligible for claiming the refund. He also relied on the decision of the Hon'ble Supreme Court in the case of ***M/s. Eagle Flask Industries Ltd. Vs. Commissioner of C.Ex., Pune reported in 2004 (171) E.L.T. 296 (S.C.)***.

6. I have considered the rival contentions and have gone through the relevant provisions of law and also various orders referred to during the course of arguments.

7.1 It is an undisputed fact that the appellant did not reverse the equal amount as required by the condition at paragraph 2(h) of Notification No. 27/2012 (*supra*). But the fact also remains that there was no provision in the ACES system to debit the value of refund and also the fact that the entire credit which was carried forward in TRAN-1 stood reversed by the appellant voluntarily in its GSTR-3B filed for the month of April 2018.

7.2 The above facts, according to me, are sufficient compliances with the condition at paragraph 2(h) since post G.S.T., the scenario is different than the one prevailing prior to G.S.T. regime. Otherwise, it would become an impossible task for an assessee, more so when the filing of ST-3 returns itself was done away with.

8. I also note that the Board has clarified the above position in its Circular No. 58/32/2018-G.S.T. (*supra*) and I also note that more or less the same view is expressed in all the orders relied on by the Ld. Advocate for the appellant.

9. In view of the above, I am of the considered opinion that the denial of refund is not in accordance with law and hence, the impugned orders cannot sustain. The same are set aside.

10. Consequently, the appeals stand allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **22.07.2019**)

(P. DINESHA)
MEMBER (JUDICIAL)

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