IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41798 of 2019

(Arising out of Orders-in-Appeal Nos. 226, 227 & 228/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. and Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Astra Zeneca India Private Limited **: Appellant**
1st Floor, North Wing & South Wing,
IT Building, Jayanth Tech Park,
Nandambakkam, Chennai – 600 089

VERSUS

The Commissioner of G.S.T. and Central Excise **: Respondent**
Chennai South Commissionerate,
692, M.H.U. Complex, Nandanam, Anna Salai, Chennai – 600 035

APPEARANCE:

Shri N.V.S. Ramani, Consultant for the Appellant

Shri Arul C. Durairaj, Authorized Representative (A.R.) for the Respondent

CORAM:

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

FINAL ORDER NO. 41603 / 2021

DATE OF HEARING: 15.04.2021

DATE OF DECISION: **23.06.2021**

Order :

This appeal is filed by the assessee against the impugned Orders-in-Appeal Nos. 226, 227 & 228/2019 (CTA-II) dated 31.08.2019 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. and Central Excise, Chennai.

2. The appellant had filed a refund claim of the unutilized input service credit availed on various input services and after putting the appellant on Notice, the

Adjudicating Authority, vide Order-in-Original No. 28/2019-(R) dated 05.04.2019, granted a partial refund. The reason given by the Adjudicating Authority for rejecting a part of the refund claim (Rs.12,00,695/-) was that the said CENVAT Credit on input services was taken for the period before October 2016 while arriving at the total CENVAT Credit taken during the quarter October to December 2016 and hence, according to him, the same was ineligible. On appeal before the First Appellate Authority, the Commissioner (Appeals-II) having confirmed the rejection, the present appeal has been filed before this forum.

3. When the matter was taken up for hearing, Shri N.V.S. Ramani, Learned Consultant, appeared for the assessee-appellant and Shri Arul C. Durairaj, Learned Departmental Representative, appeared for the Revenue.

4. Heard both sides, perused the documents placed on record and have also gone through the various decisions relied upon by the Learned Consultant for the appellant.

5.1 It is the case of the appellant that there was no inward remittance for the period from July 2016 to September 2016 and hence, no FIRCs were available. This being so, the appellant did not satisfy the definition of export turnover within the meaning of Clause (D) of Sub-Rule (1) to Rule 5 of the CENVAT Credit Rules, 2004, for which reason, refund was not claimed for the CENVAT Credit for the said period. For this very reason, the appellant apparently had clubbed the CENVAT Credit pertaining to the quarter July to September, 2016 along with the CENVAT Credit pertaining to the quarter ending 2016. Reliance was placed on the order of the Co-ordinate Mumbai Bench of the CESTAT in *M/s. BA Continuum India Pvt. Ltd. v. Commissioner of Service Tax-II, Mumbai* reported in *2018 (6) T.M.I. 1011 – CESTAT MUMBAI* in support.

5.2 On going through the said order, I find that a more or less similar issue has been addressed to by the Learned Bench wherein also the appellant had clubbed its refund claims and the Bench had ruled as under:

> *"17. As regard the issue that the refund for the period April to September, 2012 filed for six months it was observed that appellant though filed refund claim after six month but they have filed though one claim but it is for April to Jun 2012 and July to September, 2012, merely for the reason that no separate claim for two quarters were filed refund cannot be rejected. The restriction under notification provided to avoid multiple claims in particular quarters therefore the claim should be filed quarterly basis but if the claim is filed after six months for two quarters there is no violation of any condition. Only condition which bar the refund is refund should be filed within the overall period of one year from the relevant date. If that be so refund is well within the time limit and same should be allowed."*

6. Further, it has been held by co-ordinate Mumbai CESTAT (*M/s. WNS Global Services Pvt. Ltd. vs. C.C.E., Pune III – 2015 (11) TMI 905 – CESTAT Mumbai*, followed in *M/s. Q Logic India Private Limited vs. C.S.T., Pune – 2016 (7) TMI 1175 – CESTAT, Mumbai*) that for the purposes of refund, the CENVAT credit of any particular quarter will include the amount of brought forward credit as well from the earlier quarter. When this is the position of law, then denying the refund on the ground that the CENVAT Credit on input services was taken for the period before October 2016 while arriving at the total CENVAT Credit taken during the quarter October to December 2016, cannot stand. Moreover, it is not the case of the Revenue that the appellant's claim for refund lacks any merit. In view of this and in the absence of any contrary decisions/orders, I am of the opinion that the rejection of the refund claim is improper. Accordingly, it is held that the appellant's claim for refund is in order and the rejection of the same is improper. Hence the impugned order deserves to be set aside and the same is set aside.

7. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **23.06.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd