IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 42742 of 2018

(Arising out of Order-in-Appeal No. 149/2018 (CTA-II) dated 31.03.2018 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Indo Tech Transformers Limited **: Appellant**
Survey No. 151-243, KM-64,
Chennai-Bangalore Highway, Illuppapattu Village,
Rajakulam Post, Kanchipuram – 631 557

VERSUS

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

APPEARANCE:

Shri T.R. Ramesh, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative (A.R.) for the Respondent

CORAM:

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

FINAL ORDER NO. 41625 / 2021

DATE OF HEARING: 24.06.2021

DATE OF DECISION: **01.07.2021**

Order :

The only issue involved in the present appeal is refund under Rule 5 of the CENVAT Credit Rules, 2004.

2. When the matter was taken up for hearing, Shri T.R. Ramesh, Learned Advocate, appeared for the assessee-appellant and Ms. K. Komathi, Learned Authorized Representative, appeared for the Revenue-respondent.

3. I have heard the rival contentions, perused the documents placed on record and gone through the various decisions/orders relied upon during the course of hearing.

4.1 Facts are not in dispute. The appellant is engaged in manufacture and sale of transformers and its parts and had obtained necessary Central Excise Registration for the same; that the appellant had made clearances under CT1 Certificates for export between 04.07.2015 to 26.09.2015; that not being in a position to use the credit, the appellant filed refund claim of Rs.23,78,227/- under Rule 5 of the CENVAT Credit Rules, 2004 on 22.09.2016 pertaining to the quarter July 2015 to September 2015; that the Original Authority vide Order-in-Original No. 450/2017-CE dated 10.10.2017 sanctioned the refund of Rs.1,29,488/- and rejected Rs.22,42,907/- in terms of Section 11B of the Central Excise Act, 1944 read with Notification No. 27/2012-C.E.(N.T.) as amended, holding that the same shall lapse in terms of first proviso to Section 142 (3) of the C.G.S.T. Act, 2017, which order came to upheld by the First Appellate Authority vide impugned Order-in-Appeal No. 149/2018 (CTA-II) dated 31.03.2018. Aggrieved by the same, the assessee has preferred the present appeal before this forum.

4.2 Learned Advocate for the appellant also submitted that in terms of paragraph 3(b)(i) of the Notification No. 27/2017-C.E.(N.T.), the refund claim pertaining to a particular quarter has to be filed before the expiry of the 'period' specified in Section 11B of the Central Excise Act, 1944; that in terms of the said Notification, the period alone i.e., one year, is made applicable for the relevant quarter in respect of refunds filed under Rule 5 of the CENVAT Credit Rules, 2004 and not the 'relevant date'; that accordingly, if the appellant filed the refund claim within one year from the end of the quarter, the same would be within limitation in terms of Notification No. 27/2017-C.E.(N.T.). Admittedly, in the present case, the appellant filed the refund claim within one year from the end of the quarter.

5. During the course of arguments, Learned Advocate for the appellant relied upon the decision of the Hon'ble jurisdictional High Court in the case of *Commissioner of C.Ex., Coimbatore v. M/s. GTN Engineering (I) Ltd.* reported in *2012 (28) S.T.R. 426 (Mad.),* which has been referred to by the Hon'ble High Court of Karnataka in *M/s. Suretex Prophylactics India Pvt. Ltd. v. Commr. of C.Ex., Cus. & S.T., Bangalore* reported in *2020 (373) E.L.T. 481 (Kar.).* He also relied on an order of the Mumbai Bench of the CESTAT in the case of *M/s. Oceans Connect India Pvt. Ltd. v. Commissioner of C.Ex., Pune-III* reported in *2016 (46) S.T.R. 858 (Tri. – Mumbai)* wherein, after considering the arguments and the provisions, the Co-ordinate Bench has held as under :

> *"6. …*
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> *.*
> *.*
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> *From the aforesaid provision in clause (D) of Rule 5(1) for export turnover of services, one of the element is payment received during the relevant period for export services. In the present case as per the FIRC the payment in convertible foreign currency was received during the relevant quarter therefore the same should be considered as export turnover during the relevant quarter only. There is no provision in the definition of turnover of services that the export turnover should be taken as per the date of invoice. Therefore the contention of the Ld. Commissioner (Appeals) is not sustainable and the refund has to be computed by taking date of FIRC during the particular quarter for the purpose of export turnover."*

6. In view of the above, the denial of refund of CENVAT Credit as time-barred is not acceptable. So, the impugned order and the denial stands set aside.

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

(Order pronounced in the open court on **01.07.2021**)

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

Sdd