

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40845 of 2021

(Arising out of Order-in-Appeal No. 22/2021 (CTA-II) dated 23.3.2021 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

**M/s. Doowon Automotive Systems
India Pvt. Ltd.**

Plot #B 19 & 20, SIPCOT Industrial Park
Oragadum, Sriperumbudur 602 105.
Lakshmi Narashimhan Building, 2nd Floor

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, 2054, I-Block, II Avenue
12th Main Road, Anna Nagar
Chennai – 600 040.

Respondent

APPEARANCE:

Shri T.R. Srinivasan, Consultant for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40199 / 2022**

Date of Hearing : 18.05.2022

Date of Decision: 19.05.2022

Brief facts are that during the audit of accounts, it was noticed that the assessee is liable to pay service tax under the category of renting of immovable property service, ocean freight charges and scientific and technical services. The appellant paid the tax along with applicable cess. As they were eligible to avail credit on the amount paid under reverse charge mechanism, they filed refund claim for Rs.7,64,980/- under sec. 11B of the Central Excise Act, 1944 read with section 142(3) of CGST Act, 2017. The original authority rejected the

refund claim holding that there is no provision to grant refund after the introduction of GST with effect from 1.7.2017. They filed appeal before Commissioner (Appeals) who held that the appellant is eligible for refund, however, the issue as to whether the refund is time-barred has to be verified. The matter was thus remanded to the adjudicating authority. In the denovo adjudication, the adjudicating authority held that since the service tax was paid on 23.4.2018 and refund claim has been filed on 29.5.2019, the claim is barred by limitation. In the previous round of litigation, the Commissioner (Appeals) had already held that the cess paid along with the tax is not eligible for refund. In the second round of litigation, thus, the refund claim was limited to Rs.3,66,307/-. Against this order of the adjudicating authority rejecting the refund claim on the ground of limitation under sec. 11B(1) of Central Excise Act, 1944 r/w CGST Act, 2017, the appellant filed appeal before Commissioner (Appeals). The order of rejection was upheld by the Commissioner (Appeals). Hence this appeal.

2. On behalf of appellant, Id. Consultant Shri T.R. Srinivasan appeared and argued the matter. He submitted that the appellant has paid the service tax on renting of immovable property service, ocean freight charges and scientific and technical services. If the GST was not introduced, they would be eligible to avail CENVAT credit of the same. As per section 142 of the CGST Act, 2017, the appellant is eligible for cash refund. He submitted that the refund claim in the present appeal is limited to Rs.3,66,307/- and does not include the cess paid by them.

3. He relied upon the decision of the Tribunal in the case of Jai Mateshwaari Steels Pvt. Ltd. Vs. Commissioner vide Final Order No. 50165/2022 dated 11.2.2022 and the case of Punjab National Bank Vs.

Commissioner vide Final Order No. 20505/2021 dated 7.7.2021. It is argued by the learned consultant that section 142(8)(b) has an overriding effect and the refund can be rejected only on the ground of unjust enrichment. He prayed that the appeal may be allowed.

4. The learned AR Shri R. Rajaraman supported the findings in the impugned order.

5. Heard both sides.

6. The issue for consideration is whether the refund claim is hit by limitation when filed after the introduction of GST. The Tribunal in the case of Jai Mateshwaari Steels Pvt. Ltd. (supra) has analysed the very same issue and held as under:-

“4. I find from a plain reading of the provisions quoted hereinabove, Section 142(3) of CGST Act, provides that after the appointed day (30th June 2017) every claim for refund of any duty, tax, interest, etc., under the existing law shall be disposed of in accordance with the provisions of the existing law and any amount eventually accruing to him (assessee) shall be paid in cash, notwithstanding, anything to the 3 ST/50407/2021 contrary contained under the provisions of existing law other than the provisions of sub-section 2 of Section 11B (unjust enrichment) of Central Excise Act.

5. Further, again 142(8)(b) also similarly provides for disbursement of any refund arising pursuant to assessment or adjudication proceedings, except for the provisions of Section 11B(2) of Central Excise Act, which deals with unjust enrichment.

6. Admittedly, in the facts of the present case, no limitation is applicable as provided under Section 11B (one year from the relevant date), due to overriding effect of CGST Act. Accordingly, I find that the appellant is entitled to refund under the provisions of Section 142(3) r/w 142(8) (b) of the CGST Act r/w the erstwhile provisions of Central Excise Act and the Cenvat Credit Rules.

7. Accordingly, this Appeal is allowed and the impugned order is set aside. The adjudicating authority is directed to disburse the amount of refund alongwith interest under the provisions of Section 11BB of the Central Excise Act. It is further directed that the refund with interest should be disbursed within a period of 45 days from the date of receipt or service of a copy of this order on the adjudicating authority.”

The very same was considered by the Tribunal in the case of Punjab National Bank (supra).

7. Following these decisions, I am of the view that the rejection of refund claim on the ground of limitation is not justified. The impugned order is set aside. The appeal is allowed with consequential reliefs if any.

(Pronounced in court on 19.5.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex