CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal Nos.41832 to 41834 of 2019 - SM

[arising out of Order-in-Appeal No.283/2019(CTA-II), dated 28.09.2019 passed by Commissioner of GST & CE (Appeals-II), Chennai]

M/s. HID India Pvt. Ltd. **Appellant**
10th Floor, Altius „A" & „B" Block,
Plot No.1, Olympia Technology Park,
SIDCO Industrial Estate,
Guindy, Chennai – 600 032.

VERSUS

Commissioner of GST & CE, **Respondent**
Chennai South Commissionerate,
Newry Towers, I Block, 2nd Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

Appearance:

Shri Vinayaka Hegde, Consultant, *for the Appellant*
Ms. Sridevi Taritla, Authorised Representative, *for the Respondent*

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 10.08.2021
Date of Pronouncement: 30.08.2021

FINAL ORDER Nos. 42286-42288 / 2021

The appellants are engaged in providing Information Technology Services. They filed refund claim under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27/2012-CE(NT), dated 18.06.2012. After due process of law, the original authority rejected the refund claims against which the appellants approached the

Commissioner (Appeals). The view taken by the adjudicating authority was upheld by Commissioner (Appeals). Hence these appeals.

2. The learned consultant Shri Vinayaka Hegde appeared and argued for the appellant. The amount involved and period of dispute in these appeals is given in the table below:-

Appeal No.	**O-I-A Ref.**	**SCN Ref.**	**Refund amount [in Rs.]**	**Refund period**
ST/41832/2019	283/2019	22/2018	11,47,114	Oct."16 to Dec."16
ST/41833/2019	284/2019	23/2018	10,48,995	Jan."17 to Mar."17
ST/41834/2019	285/2019	24/2018	15,09,209	Apr."17 to Jun."17

2.1 He submitted that all the three different claims were filed on 15.12.2017. The reason for rejection are summarised by the learned consultant in the table given below:-

Appeal No.	**Reasons for rejection in O-I-O**	**Findings in OIA**
ST/41832/2019	The refund claim for two FIRC"s is barred by limitation. The remaining one FIRC is addressed to the Bengaluru office and hence, cannot be considered. CENVAT credit to the extent of Rs.5,20,729/- is ineligible because the bills are addressed to the Bengaluru office. Condition 2(h) of the Notification not fulfilled.	Appeal dismissed because the appellant has not debited the refund amount in terms of condition 2(h) of the Notification.
ST/41833/2019	The FIRC"s are addressed to the Bengaluru office and hence, cannot be considered. CENVAT credit to the extent of Rs.1,02,766/- is ineligible because the bills are addressed to the Bengaluru office.	Appeal dismissed because the appellant has not debited the refund amount in terms of condition 2(h) of the Notification.

	Condition 2(h) of the Notification not fulfilled.	
ST/41834/2019	The FIRC"s are addressed to the Bengaluru office and hence, cannot be considered. CENVAT credit to the extent of Rs.3,74,488/- is ineligible because the bills are addressed to the Bengaluru office. CA Certificate is not submitted. Condition 2(h) of the Notification not fulfilled.	Appeal dismissed because the appellant has not debited the refund amount in terms of condition 2(h) of the Notification.

2.2 He made the following submissions with regard to the grounds of rejection of the refund claim:-

(i) The question of debiting the refund amount from the Cenvat credit account does not arise because the claim has been filed after the introduction of the GST. There is no facility to file the ST-3 for the period when the refund application was filed in December, 2017. The appellants have not availed any transition credit. Hence, it is deemed the credit has been debited. Debit is made in Cenvat credit registered and after the debit, the closing balance is „Nil".

(ii) Bengaluru office is head office of the appellant. Copy of the ROC registration certificate is submitted.

(iii) The appellant has only one bank account i.e., in Bengaluru. The banker has issued the FIRC copy with such address as per their records. A bank"s single bank account cannot be registered with multiple address.

(iv) The Bengaluru office is engaged in the manufacturing activity and also providing services within India. However, there is no export of services from Bengaluru, which is evident from ST-3 and ER-1 returns. Hence, the receipts issuedare towards the services rendered from Chennai office only.

(v) The FIRCs clearly contain the reference of the export invoice raised from Chennai (details of payment portion in the FIRC). This would make the case of the appellant abundantly clear that the amount received is towards the export of services from Chennai only and not for any other purpose.

(vi) The appellant has also submitted an affidavit and a certificate from a Chartered Accountant. Without considering these documents, the authorities below have concluded that FIRCs submitted are not related to the services provided from Chennai.

(vii) The head office of the appellant is in Bengaluru. Some of the vendors have mentioned the address of the Bengaluru office because the head office is located therein, though the services are received and utilised in Chennai.

(viii) Sub-rule (2) of Rule 9 of the Cenvat Credit Rules provides relaxation when the document does not contain certain information. There is no mandatory requirement to include the address of the service recipient in the sub-rule.

(ix) There are several decisions which have held the Cenvat credit cannot be denied based on the fact that the documents are addressed to the head office.

2.3 The issue with regard to limitation was countered by the learned consultant Shri Vinayaka Hegde as under:-

The appellants have filed the refund application after the introduction of GST (15.12.2017). The refund application filed after the introduction of GST towards the refund claim of Cenvat credit is governed by the transition provisions under section 142(3). The said section reads as under:-

> "*Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty,*

> *tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash,* ***notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944);***
>
> *Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:*
>
> *Provided further that no refund shall be allowed pf any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act."*

2.4 As could be seen from the above reproduced provisions, the refund shall be processed notwithstanding anything contained under the provisions of section 11B, except sub-section (2), which deals with the unjust enrichment. In the current case, the question is of limitation and not unjust enrichment. There is no mention about the applicability of the limitation under section 142(3). In view of the specific provisions given under section 142 (3) of the CGST Act, the refund claim ought to be granted without applying the limitation provisions.

2.5 The appellant relied upon the decision in the case of *M/s. Punjab National Bank Vs CCT, Bengaluru, North* vide Final Order No.20505/2021 passed on 07.07.2021, wherein it has been held that the limitation under section 11B shall not be applicable for the refunds filed after the implementation of GST. The relevant para reads as under:-

> *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 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 Service Tax Appeal No.20068 of 2020 refund.*

3. With regard to the rejection of refund alleging that the invoices are raised in the head office at Bengaluru, though the services are received in Chennai, the learned counsel relied upon the following decisions:-

(i) M/s. Vamshadhara Paper Mills Ltd., Vs Commissioner of GST & Central Excise, Chennai reported in *2020 (33) G.S.T.L. 184 (Tri.-Del.)*;

(ii) M/s. Rajender Kumar & Associates Vs Commissioner of Service Tax, Delhi-11 reported in *2021 (45) G.S.T.L. 184 (Tri.-Del.)*.

4. Without prejudice to the foregoing submissions, the appellant further submited that they have debited the refund amount from the Cenvat credit ledger and has not availed transition credit. if the refund is not sanctioned, the debited amount is to be sanctioned as re-credit since the reason for rejection is not on account of ineligibility. Even when the refund is to be re-credited, it has to be given in cash only because of the provisions contained under section 142 (3) of the GST Act. The appellant would then also be eligible for refund in cash. In support of this submission, the appellant relied upon the decision CESTAT in the case of *M/s. Toshiba Machine (Chennai) P. Ltd., Vs Commissioner of Central Tax, Chennai* reported in *2019 (27) G.S.T.L.216 (Tri.-Chennai)*. He prayed that the appeal may be allowed.

5. The learned Authorised Representative Ms. Sridevi Taritla appeared and argued for the department. She adverted to para 11 of the Order-in-Original and argued that the two FRICs showed the date of realisation as 21.10.2016 and 17.11.2016. When computed from the date of realisation till the date of filing the refund claim dated 15.12.2017, is beyond the time-limit prescribed under section 11B. The refund is, therefore, hit by time bar. She also relied upon the decision of the Tribunal in the case of *Guntur, GST Vs M/s. Southern Rocks and Minerals Pvt. Ltd.,* vide Final Order No.A/30832/2018, dated 06.08.2018. She argued that the Tribunal in the said case has held that the condition of the notification has to be fulfilled. In the present case, the refund has to be filed within one year and all the conditions in the notification have to be fulfilled. The appellants have not fulfilled the conditions 2(h). Therefore, the authorities below have rightly rejected the refund claim.

6. Heard both sides.

7. At the outset, it has to be stated that when the matter came up for hearing on 09.07.2021, the Bench directed the department to verify and report whether the appellants have carried forward the Cenvat credit to TRAN-1 credit. Today, the department has filed report stating that the appellants have not carried forward the Cenvat credit to Tran-1 credit, after introduction of GST.

8. The first ground on which the refund has been rejected is that the appellants have not complied with the condition in clause 2(h) of the notification. As per this condition, the appellants are required to debit the amount of credit in their Cenvat account. The refund claim is filed on 15.12.2017. This is after introduction of GST. Needless to say that no Cenvat account would be available for debit after the introduction of GST. So also, they cannot file service tax return reflecting the said debit. The insistence of the department that the appellants have to debit in their Cenvat account and reflect the same by filing ST-3 returns, even after introduction of GST is requiring the appellants to comply with a condition, which is not practically possible. For this reason, I find that the rejection of refund claim on this ground is unsustainable.

8.1 Another ground for rejecting the refund claim is that the FRCIs are addressed to Bengaluru office and, therefore, the Cenvat credit availed in Chennai office is not eligible. The appellants have submitted that their head office is situated in Bengaluru and they have only one bank account. The banker will not issue account in multiple addresses. Further, the Bengaluru office is engaged in manufacturing activity and the export of services takes place only at the Chennai office. They have also furnished a certificate from the Chartered Accountant showing the services have been availed only at the Chennai office. The appellants have given plausible explanation as to why FRCIs issued only in their Bengaluru address. The Tribunal in the case of *M/s. Vamshadhara Paper Mills Ltd.,* (supra) had occasion to analyse the said issue and held that credit cannot be disallowed merely because the invoices are issued in the address of the head office.

8.2 The third issue is with regard to limitation. The learned Authorised Representative has pointed out that the refund claim is barred by limitation for the reason that the period of one year is to be computed from the date of consideration. Indeed in para 11 of the Order-in-Original, the refund sanctioning authority has noted that two FIRCs totalling to amount of Rs.2,78,91,177/- are dated 21.10.2016 and 17.11.2016 and, therefore, the claim filed on 15.12.2017 is time-barred. At this juncture, it has to be stated that prior to the introduction of GST, the refund claims were filed under Rule 5 of Cenvat Credit Rules read with the notification as well as section 11B of the Central Excise Act, 1944. To some extent the refund claims filed after introduction of GST are not fully governed by section 11B of Act *ibid.* Section 142 of the GST Act deals with the transitional provisions. The said section does not prescribe any time-limit for filing the refund claim. It speaks only about the test of unjust enrichment. The issue as to whether the time-limit specified under section 11B of Central Excise Act, 1944 would apply to refund claims filed under section 142 of GST Act, 2017 was considered by the Tribunal in the case of *M/s. Punjab National Bank Vs CCT, Bengaluru* vide Final Order No.20505/2021, dated 07.07.2021. The said decision is squarely applicable to this case.

8.3 In the case of *M/s. Toshiba Machine (Chennai) P. Ltd., Vs Commissioner of Central Tax, Chennai* (supra), the Tribunal discussed the transitional provisions in the GST Act and held that after 01.07.2017, the Cenvat account is no more in existence and the refund has to be paid in cash. The discussion is as under:-

> **"6.** In the circumstances, when the Commissioner (Appeals) passed the impugned order on 30-11-2017, he should have taken note of the fact that the erstwhile Central Excise Act, 1944 and the Finance Act, 1994 had been subsumed by the Central Goods and Service Tax Act, 2017 w.e.f. 1-7-2017. When the Cenvat account as was prevalent earlier did not have any more existence with effect from that date (1-7-2017), the Commissioner (Appeals) could have very well taken note of the following transitional

provisions of Section 142(3) of the Act and ordered refund to be paid in cash :

"(3) Every claim for refund filed by any person (3) before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to Him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 (1 of 1944) :

Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse :

Provided further that no refund shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

7. In our view, once the GST regime is in force, the pending refund claim, if sanctioned, will necessarily have to be paid in cash irrespective of the fact whether the refund amount pertains to that emanating from Cenvat account or from account current. Any other interpretation would lead to a situation where the assessee, who is otherwise undisputedly entitled to the refund amount of Rs. 5,20,800/- is left high and dry only because that amount emanated from their erstwhile Cenvat account. For these reasons, we find merit in the appeal filed by the assessee, in consequence, the impugned order cannot be sustained and is set aside. This will have the effect of restoration of Order No. 81/2016-17, dated 12-7-2016 of the original authority. Appeal allowed on above terms."

8.4 Applying the ratio laid in the above decisions, I am of the view that rejection of refund on the ground of time bar cannot sustain and requires to be set aside. Further, it has already been verified and reported by the department that the appellants have not carried forward their Cenvat credit to Tran-1 credit. On such score, the appellants are eligible for refund.

9. From the foregoing discussions, I hold that the rejection of refund is unjustified. The impugned order to this extent is set aside. The appeals are allowed with consequential relief, if any.

(Pronounced in open court on **30th August, 2021**)

(Sulekha Beevi C.S.)
Member (Judicial)

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