CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40660 of 2018

(Arising out of Order-in-Appeal No. 415/2017 (CTA-II) dated 30.11.2017 passed by Commissioner of Central Excise (Appeals – II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Cognizant Technology Solutions India Private Limited ...Appellant
6th Floor, New No. 165,
Old No. 110, Menon Eternity Building,
St' Mary's Road, Alwarpet,
Chennai – 600 018.

Versus

Commissioner of GST and Central Excise ...Respondent
MHU Complex, No. 692,
Anna Salai, Nandanam,
Chennai – 600 035.

<u>APPEARANCE:</u>

For the Appellant : Mr. Rajaraman, Consultant
For the Respondent : Mr. Anoop Singh, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

<u>FINAL ORDER No. 40289 / 2025</u>

DATE OF HEARING : 18.02.2025
DATE OF DECISION : 28.02.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/40660/2018 has been filed by M/s. Cognizant Technology Solutions India Private Limited (hereinafter referred to as 'Appellant') assailing the Order-in-Appeal No. 415/2017 (CTA-II) dated 30.11.2017 passed by Commissioner of Central Excise (Appeals – II), Chennai for allowing Departmental appeal and rejecting the refund claims filed both on the grounds of limitation and also on merits.

2. Briefly stated, the facts are that the Appellant is engaged in providing IT services and is registered with the Service Tax Department as a provider of IT Software Services, Business Auxiliary Services, Management maintenance and repair services *etc*. under Registration No. AAACD3312MST001. The taxable services rendered by the Appellant are mostly exported, as well as provided domestically to the Customers in India. As the Appellant is involved in more of export of services is unable to utilize the CENVAT credit completely towards output service tax liability. Therefore, the Appellant claims refund of accumulated CENVAT credit, in terms of Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006 dated 14.03.2006. Accordingly, for the period from July 2009 to December 2009, August 2011 to October 2011 and January 2012 to March 2012, the Appellant filed separate refund applications. Subsequently, the Assistant Commissioner LTU has issued SCN dated 12.12.2014 to the Appellant which was adjudicated *vide* Order-in-Original No.

LTUC/257/2015-AC(RF) dated 23.06.2015 whereby subject refund claims were allowed. Revenue preferred an appeal against said OIO and Commissioner (Appeals) *vide* impugned Order-in-Appeal No. 415/2017 dated 30.11.2017 allowed the Department's appeal. Aggrieved by the said OIA, the Appellant has preferred this appeal before the Tribunal.

3.1 The Ld. Consultant Shri Rajaram appeared and argued for the Appellant. He has contended that during the personal hearing before the Commissioner (Appeals), the Appellant submitted a withdrawal application *vide* Affidavit citing the grounds such as that the company intends to transition the balance lying unutilized in CENVAT credit ledger through GST FORM TRAN_1 and cited that there would be no double benefit to the Appellant on transitioning the CENVAT credit as the second proviso to Section 142(3) very clearly specified that no refund claim would be allowed if the same credit has been carried forward into the GST regime.

3.2 He also contended that although their refund applications were allowed *vide* Order-in-Original No. LTUC/257/2015-AC(RF) dated 23.06.2015, the refund amounts were not disbursed to them. Revenue preferred an appeal against said OIO and the Commissioner (Appeals) allowed the Department's appeal. He prayed for withdrawal of this Appeal.

4. The Ld. Authorized Representative Shri Anoop Singh representing the Department reiterated the findings of Commissioner (Appeals) and stressed that the appeal memorandum appears to be incomplete in terms of Rule 16 of CESTAT Procedure Rules, 1982, as the relied/referred upon SCN, original refund application and documents such as deficiency memo *etc*. are not available as part of case record. It was stressed that assessee has not furnished mandatory documents in original, and correctness of the photocopy documents submitted at later stage has not even been confirmed by Original Adjudicating Authority. He submits that the Photocopy of the documents and that too the sample photocopies are no documents in the eyes of law, especially in terms of Notification No. 05/2006 dated 14.03.2006 which clearly distinguishes Photocopy documents from the original documents and documents duly certified by Authorities.

5. Heard both sides and considered the oral and written submissions.

6. The Ld. Consultant Shri Rajaram for the appellant has informed that CENVAT credit involved in these refund claims have got transitioned to GST regime and as such, they are not eligible for these refund claims. He has prayed for the withdrawal of this appeal.

7. In view of his submission, the Appeal No. ST/40660/2018 is dismissed as withdrawn without commenting and expressing any opinion on the merits of the case.

8. Thus, the appeal is dismissed as withdrawn.

(Order pronounced in open court on 28.02.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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