CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No.52370 of 2018 (SM)

[Arising out of Order-in-Appeal No.154(AG)/CE/JDR/2018 dated 9.3.2018 passed by the Commissioner (Audit), Central Goods & Service Tax, Commissionerate, Jodhpur.]

Banswara Syntex Ltd. **Appellant**
Industrial Area, Dahod Road,
Banswara,
Rajasthan.

VERSUS

Commissioner of Central Goods & Service Tax, **Respondent**
Sector-11, Hiran Magri,
Udaipur (Rajasthan).

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainat, Advocates for the appellant.
Ms. Tamanna Alam, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51870/2021

DATE OF HEARING/DECISION:04.10.2021

ANIL CHOUDHARY:

Heard both the parties.

2. By the impugned order-in-appeal dated 9.3.2018 relating to the dispute for the period prior to 30.06.2017 (i.e. prior to GST regime), the appellant had made a pre-deposit pending litigation of Rs.75,63,721/- on 16.05.2012. Subsequently, the appellant/assessee was successful in appeal before the Commissioner (Appeals), wherein by order-in-appeal dated 15.4.2015, the demand was set aside.

3. The appellant applied for refund of the pre-deposit amount of Rs.75,63,721/-, which was allowed vide order-in-original dated 3.9.2015.

However, refund of Rs.33,69,417/- was allowed in cash and balance amount of Rs.41,94,304/- allowed by way of cenvat credit.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) challenging the directions to take cenvat credit of Rs.41,94,304/-. Ld. Commissioner (Audit) acting as Commissioner (Appeals) vide order-in-appeal dated 9.3.2018 have observed that the appellant had taken cenvat credit of Rs.41,94,304/- vide cenvat credit entry on 16.05.2012, which amount had been deposited by them vide challan in cash. Further, observed that this credit was reflected in their ER-I Return and the appellant /assessee was free to utilise it. Under such facts, there is no error in the order of the Joint Commissioner dated 3.9.2015, granting refund by way of cenvat credit.

5. Ld. Commissioner further vide impugned order granted liberty to again approach the court below for refund of the amount in cash.

6. Ld. Counsel for the appellant/assessee urges that this order is in conflict with the transitional provisions, as contained in Section 142 of CGST Act.

7. Ld. Authorised Representative for Revenue relies on the impugned order.

8. Appreciating that order of Commissioner (Appeals)/(Audit) dated 9.3.2018 is in conflict with the transitional provisions, as contained in Section 142 of CGST Act, wherein it has been provided that on or after 1.7.2017, any adjustment regarding refund of the duty or liability on the assessee has to be adjusted in cash. Accordingly, I allow this appeal, modifying the order-in-appeal directing the Adjudicating Authority to disburse refund of Rs.41,94,304/- in cash. It is further held that the

appellant/assessee is entitled to interest on the said amount from the date of reversal (03.11.2015) till the amount of refund in cash, @12% p.a., as held by the Hon'ble Supreme Court in **Sandvik Asia Private Limited .**

9. Thus, the appeal is allowed. The refund with interest may be granted within a period of 45 days from the date of receipt of copy of this order.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.