

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

Service Tax Appeal No.50753 of 2020

[Arising out of Order-in-Appeal No.94/ST/DLH/2019 dated 23.12.2019 passed by the Commissioner (Appeals-I), Central Tax, Goods & Service Tax and Central Excise, Delhi.]

M/s. Porteck India

Info Services Pvt. Ltd.,
Flat No.12, 2nd Floor, Sheel Tara House-4866/24,
Ansari Road,
Daryaganj,
New Delhi-110 002.

Appellant

VERSUS

**Commissioner of Central Goods &
Service Tax and Central Excise,**

Room No.134, C.R. Building,
I.P. Estate,
New Delhi.110 109.

Respondent

Service Tax Appeal No.50754 of 2020

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Respondent

APPEARANCE:

Shri Abhinav Kalra, Chartered Accountant for the appellant.
Shri P. Juneja, Authorised Representative for the Department.

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

FINAL ORDER NO. 51875-51876/2021

**DATE OF HEARING:14.07.2021
DATE OF DECISION:14.10.2021**

ANIL CHOUDHARY:

The issue in both these appeals is whether the refund claim under Rule 5 of Cenvat Credit Rules read with Notification No.27/2012-CE (NT) can be rejected on the ground that the appellant did not debit the amount of refund claimed at the time of filing the refund claim, but have debited such amount subsequent to the filing of the refund claim but before adjudication.

2. The brief facts are that the appellant is the exporter of taxable services. They also received various input services, on which they paid tax and taken credit being entitled to the same. The appellant could not utilise the cenvat credit as the exports were not taxable. The appellant has under Rule 5 of CCR read with Notification No.27/2012-CE filed refund claim as follows:-

Sl.No.	Appeal No.	Period	Date of Filing of refund claim	Amount of Refund claimed
1.	Appeal No.ST/50753 of 2020	Jan. 2016 to March, 2016	30.12.2016	Rs.13,86,763/-
2	Appeal No.ST/50754 of 2020	April 2017 to June, 2017	21.09.2017	Rs.8,75,551/-

3. Show cause notice was issued pursuant to scrutiny as it appeared that the appellant has not debited the refund claim amount at the time of making the claim, as required under Condition No.2 (h)

of Notification No.27/2012 dated 18.06.2012. Vide separate orders in original refund claim was rejected observing that the appellant has not debited the amount of refund claimed in cenvat credit account, as required under Condition 2 (h) of the Notification.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), *inter alia*, on the ground that the debit of the refund claimed amount was made in the cenvat credit account in September, 2017, for the refund relating to the quarter April to June, 2017 and in December, 2016 relating to the refund for the period Jan. to March, 2016 *suo moto*, even before the issue of show cause notice. Further, the cenvat credit has not been carried forward by the appellant company as a transitional credit to the GST regime, as is evident from the fact that the appellant has not submitted Form Trans-I for transfer of cenvat credit lying un-utilised under the ST Regime (ended on 30.06.2017). It was further urged that for some venial error and /or for procedural error, the substantial benefit should not have been denied. Further, admittedly the appellant have *suo moto* debited the cenvat credit account prior to the issue of show cause notice.

5. Ld. Commissioner (Appeals) ignored the order of the Hon'ble Supreme Court in the case of ***Hari Chand Shri Gopal - 2010 (260) ELT Page 3 (SC)***, wherein the doctrine of substantial compliance was explained stating that it is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects, which cannot be described as

the "essence" or the "substance" of the requirements. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute". The determination to be made is whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. The condition of the impugned notification, that the amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim, is a substantive one.

6. Further, the Id. Commissioner (Appeals) relied upon the ruling of this Tribunal being Final Order No.A/30635-30637/2018 dated 14.06.2018 in the case of **Apex Co. Vantage India Pvt. Ltd. Vs. CCT, Rangareddy**, wherein it has been held that the debit in the cenvat credit account subsequent to the filing of the refund claim violates the condition 2 (h) of the notification. Further, observing that the Rule or the notification does not provide the flexibility to the officers or the Tribunal to relax Condition No.2(h) of the notification.

7. Being aggrieved, the appellant is before this Tribunal.

8. Ld. Counsel for the appellant, Shri Abhinav Kalra, Chartered Accountant urges that the admitted fact is that the appellant have exported 100% of their services. Further, admittedly, the appellant have not carried forward the unutilised cenvat credit to the GST Regime. Under such circumstances, the appellant can no longer use the balance of cenvat credit as on 30.06.2017 for the purpose of the payment of GST, if any. Further, it is an admitted fact that the

appellant have debited the amount of refund claim *suo moto* subsequent to the filing of the refund claim, even prior to issue of show cause notice. Once the amount of refund claim has been debited under intimation to the Revenue, prior to the adjudication, there is substantial compliance of Condition No. 2 (h) of the said notification no.27/2012-CE. Ld. Counsel has demonstrated from the copy of the extract of their cenvat credit register, ledger account and general ledger the proof of having made the debit prior to the issue of show cause notice. Ld. Counsel further urges that the Id. Commissioner (Appeals) have erred in ignoring the ruling of the Hon'ble Supreme Court and following the rulings of this Tribunal, which is both judicial indiscipline and also in violation of the Article 141 of the Constitution of India. Accordingly, prays for allowing their appeal with consequential benefits.

9. Ld. Departmental Representative for the Revenue relies upon the impugned order.

10. Having considered the rival contentions, I hold that the debit of the amount of refund claim in the cenvat credit account *suo moto* before the adjudication, is sufficient compliance Condition No.2(h) of the Notification No.27/2012-CE. Further relying on the ruling of the Hon'ble Supreme Court in the case of **Hari Chand Shri Gopal & Ors.(supra)**, I further hold that the Commissioner (Appeals) have mis-conceived and mis-directed himself by ignoring the ruling of the Hon'ble Supreme Court, which is both judicial indiscipline and also in violation of Article 141 of the Constitution of India.

11. Accordingly, both the appeals are allowed and the impugned order(s) is set aside. Further, the Adjudicating Authority is directed to grant refund within a period of 45 days from the date of receipt of this order along with interest as per Rules (starting from the end of 3 months from the date of filing of the refund claim till the date of grant of refund claim).

12. Both the appeals are allowed.

[Order pronounced on 14.10.2021]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.