

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50960 of 2020-SM

(Arising out of order-in-appeal No. 159(CRM)CE/JDR/2020 dated 18.03.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

M/s Amzole India Pvt. Limited

H-41, Udyog Vihar

Sukher Bhuwana, Udaipur (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Goods and
Service Tax,**

142-B, Hiran Magri, Sector-11, Udaipur (Rajasthan)

Respondent

APPEARANCE:

Shri Anand Bhattacharya, Advocate for the appellant

Shri Ravi Kapur, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 52084/2021

DATE OF HEARING/DECISION: 08.12.2021

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the appellant a manufacturer of chemical products, imported raw material and paid the price for the same by way of Cost + Insurance + Freight (CIF). The appellant received the goods and has shown the receipt in their books of accounts and also other records when the goods are received during the period.

3. In the course of audit sometime in the year, 2018 the audit pointed out that vide Notification No. 30/2012-ST as amended by

Notification No. 15/2017-ST dated 13.04.2017, effective from 23.04.2017 wherein the provisions was made that any person liable for paying service tax under reverse charge mechanism in respect of services provided or agreed to be provided by a person – service provider located in non-taxable territory, to a person located in taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs clearance in India, the person liable for paying service tax other than the service provider shall be the importer as defined under clause (26) of Section 2 of the Customs Act.

4. Further, Rule 6 of Service tax Rules were amended by inserting sub-rule 7CA after rule 7C vide, Notification No. 16/2017-ST w.e.f. 23.04.2017. The newly inserted sub-rule 7CA provides, the person liable for paying service tax for the taxable services provided or agreed to be provided by a person located in non-taxable territory to a person located in taxable territory, shall have the option to pay an amount calculated @ 1.4% of the sum of CIF value, of such imported goods, plus cess.

5. It appeared to Revenue that the appellant as required by amended provision, have not paid the input service tax on reverse charge basis and accordingly on raising of the audit objection, the appellant deposited the tax alongwith interest totalling Rs.1,29,745/- vide challan dated 10.10.2018. As the amount of Rs.1,00,003/- towards service tax was deposited, being part of the input service, the appellant was entitled to cenvat credit in terms of Rule 3 of Cenvat Credit Rule. However, in view of GST regime started from 01.07.2018, the credit for the period prior to 01.07.2018 could not be taken, and in

terms of Section 142(6a) an assessee is entitled to refund of the eligible cenvat credit and it is further provided that such claim arising after 30.06.2017, shall be settled in cash. Accordingly, the appellant applied for refund on 04.05.2019 for the said service tax of Rs.1,00,003/-. Pursuant to show cause notice, the refund claim was rejected on the ground that Rule 9(1b) of the Cenvat Credit Rules, 2004, does not allow cenvat credit where a supplementary invoice is raised and the tax was not paid earlier by reason of fraud, collusion, wilful misstatement or suppression etc. As regards the contention of the assessee regarding levy of service tax on Ocean freight, the Assistant Commissioner observed that the present dispute is related to refund of credit in cash under GST regime, and hence the issue of eligibility of service tax on Ocean freight is not relevant, accordingly holding that the cenvat credit for the said amount is not available to the appellant in view of Rule 9(1)(b) of Cenvat Credit Rules, the refund claim was rejected. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who rejected the appeal upholding the finding of the Assistant Commissioner. Being aggrieved, the appellant is before this Tribunal.

6. Learned Counsel appearing for the appellant stated that there is mistake of law committed by the Court below, inasmuch as in the facts and circumstances, no supplementary invoices was raised by the service provider admittedly the appellant has imported the goods on CIF basis. He further states that under the provision of Service Tax, no rules are framed bifurcation of the composite price (CIF) and to pay service tax on the service portion. He further states that as the

appellant have paid the service tax on the audit objection raised by the Revenue, are entitled to cenvat credit under Rule 3 of Cenvat Credit Rule, and accordingly in view of the transitional provision of Section 142(6) read with 142(3) of the CGST Act, they are entitled to refund and accordingly he prays for appropriate relief.

7. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

8. Having considered the rival contentions, I find that neither there is any case of issue of supplementary invoices nor there is any case of fraud, collusion, mis-statement, etc. Under such facts and circumstances, I hold that the appellant is entitled to cenvat credit of service tax of Rs.1,00,003/- paid under reverse charge mechanism in October, 2018. Further, I hold that the appellant is entitled to refund of this amount in terms of Section 142(6) read with 143(3) of the CGST Act. Accordingly, the appeal is allowed and the appellant is entitled to refund of Rs. 1,00,003/-. The Adjudicating Authority is directed to pay the refund within a period of 45 days from the date of receipt of this order alongwith interest as per Section 11BB of the Central Excise Act.

9. In the result, the appeal is allowed with consequential benefits, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)