

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 51118 of 2019-SM

(Arising out of order-in-appeal No. 64 (SM) ST/JPR/2019 dated 20/21.02.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur).

M/s Vaibhav Global Limited

Appellant

(100% EOU)
E-68, EPIP, Sitapur
Jaipur-302022.

VERSUS

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

Respondent

NCR Building, Statue Circle, C-Scheme
Jaipur (Rajasthan) – 302005.

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50041/2022

**DATE OF HEARING: 23.07.2021
DATE OF DECISION: 18.01.2022**

ANIL CHOUDHARY:

The issue involved in this appeal is whether the refund claim of unutilised input service tax credit under Rule 5 of Cenvat Credit Rules have been rightly rejected in part, for Rs. 30,19,866/-.

2. The appellant M/sVaibhav Global Limited is a 100% EOU situated at Jaipur, registered with the Department and are engaged in manufacture of stone studded gold jewellery and silver jewellery etc. falling under Chapter 71 of the Schedule to the Central Excise Tariff

Act, 1985. Due to the nature of export, they have taken cenvat credit on input services & inputs and under the provision of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012; they applied for periodical refund. In the normal course of business, the appellant applied for refund of Rs. 1,44,62,563/- on 06.10.2017 for the quarter April, 2017 to June, 2017. Pursuant to the refund application, show cause notice dated 28.11.2017 was issued wherein in para 3, 4, 5, 6, 7 and 8, it is observed as follows:-

- "3. Whereas on scrutiny of documents enclosed with the said refund claim it is noticed that the assessee vide their letter dated Nil which received in this office on 04.09.2017 have informed that they wish to revise ER-2 return for the month of June, 2017 as there was some clerical errors in it. As per this letter the cenvat credit taken should be Rs.96,39,777/- instead of Rs. 65,88,446/- for the month of June, 2017 had already been shown in ER-2 return for the month of June, 2017 and they have filed refund claim accordingly without revised ER-2 return for the month of June, 2017. Further examination of ER-2 return for the month of April, 2017, May, 2017 and June, 2017 the cenvat credit taken shown to Rs. 28,37,960/-, Rs.20,16,344/- and Rs. 65,88,446/- respectively thus, total cenvat credit taken comes to Rs. 1,14,42,750/- but this is excess of Rs. 53/- from the closing balance of unutilised cenvat credit amounting to Rs. 1,14,42,697/- lying in the ER-2 return for the month of June, 2017 so the refund claim is restricted upto Rs. 1,14,42,697/- as per Rule 5 of the Cenvat Credit Rules, 2004 (Notification No. 27/2017-CE (NT) dated 18.06.2012).
4. Whereas as per Notification No. 08/2016-CE (NT) dated 01.03.2016 as amended vide Notification No. 42/2016-CE(NT) dated 11.08.2016 the return can be revised by the end of the calendar month in which the original filed. The assessee have filed ER-2 return for the month of June, 2017 on 10.07.2017 and this can be revised upto 31.07.2017 but the assessee did not revise the ER-2 return for the month of June, 2017, so there is no provision of accept the revised details of cenvat credit taken of Rs.96,39,777/- instead of Rs. 65,88,446/- for the month of June, 2017. Thus cenvat credit taken of Rs. 65,88,446/- appears liable to be considered for the month of June, 2017 which has already mentioned in ER-2 return for the month of June, 2017.
5. Whereas as per the condition No. (g) of the Notification No.27/2012-CE(NT) dated 18.06.2012 issued under rule 5 of the Cenvat Credit Rules, 2004 the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less. The closing balance is of Rs.1,14,42,697/- as per ER-2 return for the month of June, 2017 but the assessee has filed refund claim of Rs.1,44,62,563/-, so the refund claim appears liable to be restricted upto Rs.1,14,42,697/-. Thus, refund claim of Rs.30,19,866/- (14462563-11442697 = 3019866) appears not admissible to them.
6. Whereas, as per the condition No. (h) of the Notification No.27/2012-CE(NT) dated 18.06.2012 issued under rule 5 of the Cenvat Credit Rules, 2004 the amount that is claimed as refund under rule 5 of the

said rules shall be debited by the claimant from his cenvat credit account at the time of making the claim. It is found that the assessee have taken cenvat credit in their cenvat credit register amounting to Rs. 1,44,94,081/- and debited Rs.1,44,62,563/- vide entry No. 13754 dated 06.10.2017 in their cenvat credit register, it means that refund claimed amounting to Rs.1,14,42,697/- is included in this amount and this balance is treated as closing balance lying in balance as on 06.10.2017 i.e. date of filing refund application. Besides this the assessee have also debited of Rs.31,518/- vide entry No. 13753 on 30.06.2017 which refund was not claimed. Thus, the assessee have debited excess credit amounting to Rs.30,19,866/- without revising (14462563-11442697 = 3019866) appears not admissible to them. Further the assessee have already debited credit amounting to Rs.1,14,42,697/- so refund amounting to Rs.1,14,42,697/- appears admissible to them. Out of this, since the assessee have withdrawn Rs.7,82,757/-, it appears that refund claim of Rs.1,06,59,940/- is admissible to them.

7. Whereas further, it is found that the value of goods exported during the quarter is Rs.48,98,34,179/- as per the ER-2 refund filed by the assessee and refund claim appears admissible for Rs.1,06,59,940/- in terms of Rule 5 of the Cenvat Credit Rules, 2004 (Notification No. 27/2012-CE(NT) dated 18.06.2012) for the quarter April, 2017 to June, 2017 on the ground that they had exported the goods and there was no DTA clearance, hence the cenvat credit of service tax has been accumulated on input service received in the factory and they are not in position to utilise the same.
8. Thus, refund claim to the extent of Rs.30,19,866/- out of total amount of refund claim of Rs.1,44,62,563/- appears to be inadmissible in view of the facts stated above. Further, the assessee has withdrawn the refund amounting to Rs.7,82,757/-. Therefore, it appears that refund claim of Rs.1,06,59,940/- (14462563 - 3019866 - 782757 = 10659940) appears to be admissible to the assessee."

3. Accordingly, the appellant was required to show cause as to why their refund claim for the balance amount of Rs. 30,19,866/- should not be rejected as the same appears to in contravention of Rule 5 of Cenvat Credit Rule read with Notification No. 27/2012-CE (NT) dated 18.06.2012 as amended vide Notification No. 42/2016-CE(NT), and why the refund claim should not be restricted to 1,06,59,940/-.

4. The refund claim was adjudicated by order-in-original dated 03.01.2018 on contest and accordingly the amount of Rs.1,06,59,940/- was sanctioned. Further, the amount of Rs.30,19,866/- was held non-admissible. Further, observing that the claim of Rs. 7,82,787/- stands withdrawn.

5. The case of the appellant is while filing ER-2 return for the month of June, 2017 (GST regime stated w.e.f. 01.07.2017) on 10.07.2017, the cenvat credit for input service taken during the month was erroneously declared as Rs. 65,88,446/- instead of the correct amount of Rs. 96,39,777/- as per the books of account. The said amount was considered while declaring the closing balance of credit on 30.06.2017, as Rs. 1,14,42,750/-, instead of the correct credit amount of Rs.1,44,42,750/-. However, the discrepancy was not noticed while filing the monthly return for April, 2017 and May, 2017. The said mistake was noticed by the appellant at the time of preparing of the refund claim in last week of August. However, by that time the time for filing of revised return (last date 31.07.2017) was over in terms of Notification No. 8/ 2016-CE (NT). According to the Notification, return could be revised only till the end of the month in which the original return was filed. Thus, the appellant brought the error/ fact to the notice of the Department vide letter dated 04.09.2017 praying therein that during the month of June, 2017 the balance of credit taken should be read as Rs. 1,44,42,750/- instead of Rs. 1,14,42,750/-. Thereafter, the appellant filed refund claim for Rs. 1,44,42,750/- on the basis of actual credit taken during the quarter April to June, 2017, and the closing unutilised cenvat credit as on 30.06.2017.

6. Being aggrieved with the order of the Assistant Commissioner, the appellant preferred appeal before the learned Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal agreeing with the findings of the Assistant Commissioner. Further, observing that the condition of notification

needs to be strictly construed. Being aggrieved, the appellant preferred appeal before this Tribunal.

7. Learned Counsel Sh. Rajesh Chhibber for the appellant urges, that the department has not disputed the fact that there was mistake in declaring details of credit taken while filing monthly return for the month of June 2017, which fact was brought to the notice of department vide letter dated 04.09.2017, to which no objection was raised. Once that was so, the actual closing balance of credit for the month of June 2017 was supposed to be considered by the department as Rs.1,44,42,750/-.

7.1 The substantive benefit could not be denied on such highly technical reasons. While making such submission, the appellant has relied upon the law settled by apex court in the case of **Mangalore Chemical & Fertilizers Ltd. vs. Dy. Comm.** Reported in **1991 (55) ELT 437 (SC)**, that substantive benefit cannot be denied on technical or procedural lapses.

7.2 Further, it is submitted that both the lower authorities were appraised of decision of this Tribunal in the case of **Mach Aero Components P. Ltd. vs. CC & ST** reported **2017 (3) GSTL 348 (Tri. Bang.)** which was almost on identical issue, that mere non furnishing of some information in ER12 Return could not be the sole basis to deny the otherwise eligible benefit. None of the authorities have discussed the said decision in their orders.

7.3 The appellant also relied upon the ruling of this Tribunal in the case of **Cenveo Publisher Services India Ltd. vs. CCE & ST**

reported in **2018 (9) GSTL 416 (Tri. All.)**. The contention of department is that once the period for filing revised return was over under the provisions Notification No. 8/2016-CE (NT) dated 01.03.2016, whatever was declared as closing balance in the return for the month of June 2017, could only be considered as the actual closing balance.

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

9. Having considered the rival contentions and on perusal of the facts, I find that the following facts are not in dispute.

- (i) The appellant is a 100%EOU
- (ii) The appellant was claiming cenvat credit
- (iii) The appellant was not making any domestic sale.
- (iii) The refund claim was being filed on quarterly basis in terms of Notification no.27/2012-CE(NT) Dated 18.06.2012 issued under Rule 5 of CCR, for the quarter ending June 2017.
- (iv) The appellant was eligible to claim refund of inputs & input service credit.
- (v) There was a clerical mistake in mentioning the correct amount of credit claimed during the month of June 2017.
- (vi) The appellant could not file revised return in terms of Notification No. 8/20160-CE (NT) dated 01.03.2016.
- (vii) On coming to know the about the mistake, the appellant immediately brought such facts to the notice of department vide letter dated 04.09.2017 much before filing of refund claim, to which no objection was raised by the department.
- (viii) Said credit was duly entered in cenvat credit records.
- (ix) Since the appellant was having such credit balance in their cenvat account, they mentioned the amount of Rs.1,44,62,653.00 in respective columns provided in the prescribed refund form, filed on 06.10.2017.

10. A perusal of clause (g) of Notification No.27/2017 (supra) shows that it speaks of closing balance of credit available with assessee, and nowhere in entire notification, there is any mention that the closing balance is to be considered as the amount shown as closing balance in ER2 Return.

10.1 The objection of department is solely on the basis of closing balance declared in ER2 Return. The stand of department that since the appellant did not opt for filing revised return within the given time, they could claim refund of the amount as declared in ER2 Return only. But, there has been no objection to the submissions made by the appellant from the very beginning.

10.2 It is a settled law that the substantive benefit cannot be denied on such highly technical reasons, as the law has been laid down by Hon'ble Supreme Court in the case of **Mangalore Chemical & Fertilizers Ltd.** (supra). I find that in the case of **Mach Aero Components P. Ltd.** (supra) almost identical issue been settled, that mere non furnishing of some information in ER-12 Return could not be the sole basis to deny the otherwise eligible benefit. I find that none of the authorities below have discussed the said decision in their orders. The case of appellant is also supported with the decision of this Tribunal in the case of **Cenveo Publisher Services India Ltd.** (supra) wherein it has been held that no part of rebate can be rejected on the ground that in the declaration or intimation filed by appellant, amount mentioned is different from actual claim.

11. In view of the above, I hold that the denial of refund claim in part, solely on the basis that the same was to be given in respect of

closing balance of credit as declared in the return for the Month of June 2017, is not legal and proper, as substantive benefit cannot be denied on technical reasons, all the more, when there was no such condition in Notification No.8/2016-CE (NT) dated 01.03.2016.

12. Accordingly, the appeal is allowed by setting aside the impugned order and the original authority is directed to sanction the balance refund claim of Rs.30,19,866/- along with interest from three months after the date of filing of refund claim, till the date of sanction of refund, within 45 days from the date of receipt or service of this order.

13. Thus, the appeal is allowed in the above terms.

(Pronounced on 18.01.2022).

(Anil Choudhary)
Member (Judicial)