CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH

Service Tax Appeal No. 51935 of 2021 [SM]

[Arising out of Order-in-Appeal No.17/ST/DLH/2020 dated 04/03/2020 passed by the Commissioner (Appeals), Central Excise, New Delhi]

M/s. Forcepoint Software Consulting India Pvt. Ltd. **...Appellant**
Navneet Developers, Ground Floor 70,
Nehru Place, New Delhi- 110019.

VERSUS

Commissioner (CGST Delhi East) **...Respondent**
C.R. Building, Indraprastha Estate,
New Delhi

APPEARANCE:

Mr. Rakesh Nanda, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:07.03.2022

FINAL ORDER No. 50243/2022

RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Appeal No.17/2020 dated 4th March, 2020 vide which the refund claim of Rs.23,99,286/- as filed by the appellant for the period from October, 2016 to December, 2016 has been rejected while relying upon Notification No.27/2012 dated 18.06.2012.

2. The factual matrix, in brief, relevant for the impugned objection is as follows:-

The appellants, Forcepoint International Technology Limited (formerly known as Websense International Technology Limited) are engaged in providing Business Support Services with 100% export thereof. They were also availing Cenvat Credit under provisions of Cenvat Credit Rules, 2004 (CCR) and were claiming refund of unutilized Cenvat Credit on export of Services under Rule 5 of CCR read with Notification No.27/2012-CE dated 18.06.2012. The appellant, post GST Regime, filed the Service Tax refund of the aforesaid amount under Rule 5 of Cenvat Credit Rules, 2004. However, during the scrutiny of the said application, the Department observed the non-compliance of the conditions and procedures of Notification No.27/2012. Accordingly, had issued a Deficiency Memo Letter dated 14.01.2019. The same was duly replied by the appellant vide their letter dated 01.02.2019. However, the said refund claim was rejected by the original adjudicating authority vide Order-in-Original No.34/2019 dated 6th May, 2019 on the ground of non-fulfillment of condition No.2 (h) of the aforesaid Notification and also on the ground that the names are not correct in various invoices submitted. The said order has been upheld by Commissioner (Appeals) vide the order under challenge. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Mr. Rakesh Nanda, ld. Counsel for the appellant and Mr. Mahesh Bhardwaj, ld. Authorised Representative for the Revenue.

4. Learned Counsel for the appellant has mentioned that the refund claim in question was filed in the year 2017 when GST regime was already in force. It is submitted that the appellants had not carried forward the Cenvat Credit in the GST regime no Trans 1 was filed by the appellant. Rather the revised ST Return was filed with the sole objective of showing compliance of condition No.2 (g) of Notification No.27 of 2012. It is further submitted that 2 (h) could not be complied with simultaneously. Decision of Hon'ble High Court of Madras in the case of **BNB Paribas Global Securities Operations Pvt. Ltd. vs. Assistant Commissioner of GST and Central Excise reported as 2021 (4) TMI 783 (High Court – Madras)** has been relied upon. It is also submitted that even the Department for the period of April to June, 2017 has allowed the refund. The order of Assistant Commissioner dated 27th August, 2021 in case of appellants themselves has been relied upon.

5. With respect to another ground of rejection i.e. the different names of the company, ld. Counsel has impressed upon that the change in name was mere typographical as in few of the invoices it was an incomplete name and in few other word 'Software' got missed inadvertently. It is mentioned that such typographical error may not be the ground for denying the refund. Decision of this Tribunal in the case of Mumbai Bench in **DBOI Global Pvt.**

Ltd. vs. Commissioner of Service Tax, Mumbai reported in 2016 (11) TMI 521 has been relied upon. With these submissions, ld. Counsel has prayed for the order under challenge to be set aside and appeal to be allowed.

6. While rebutting these submissions, ld. DR has laid emphasis upon the finding in para No. 8 of the order under challenge where Commissioner (Appeals) has held that condition No.2(h) of Notification No.27 of 2012 was also to be complied with by the appellant. Apparently and admittedly the said condition has not been complied with. As such, there is no infirmity in rejecting the refund on the said ground with respect of the difference in name of appellant's company to be a ground for rejection of refund. The same is mentioned to be appellant's own violation. It is mentioned that the refund has rightly been denied on this score as well. Impressing upon no infirmity in the order under challenge, the appeal in hand is prayed to be dismissed.

7. After hearing the rival contentions and perusing the entire record, I observe and hold as follows:-

Following are the admitted facts as have also been recited by the adjudicating authority below:-

1. The appellants have not debited the refund claim in the relevant period in form ST 3 return.

2. The appellant had made the reversal of Cenvat refund claim for the quarter October to December 2016

under Rule 5 of Cenvat Credit Rules in Original Service Tax Return for the period April to June, 2017.

3. The said reversal of Cenvat Credit was well before the filing of impugned refund claim application.

4. The appellant did not carry forward any balance in Cenvat Credit as on 30th June, 2017 in GST regime.

5. Trans -1 form has not been field by the appellant.

6. The claim has been restricted for the quarters upto July to September, 2016.

7. The revised ST-3 Return for the period April to June, 2017 filed on 28th September, 2017 was filed in order to comply with the condition No.2(g) of Notification No.27 of 2012 dated 18.06.2012.

8. There are no recoverable arrears pending against the appellant for realization.

8. This is an acknowledged fact that when the refund claim is filed under Rule 5 of CCR 2004, the assessee has two options:-

i) Debit the refund claimed in their Apr-Jun 2017 ST-3 return or

ii) Not debit the refund claimed in the said return also not carry the balance forward in their TRAN-1 or not to file TRAN-1 at all.

9. Thus, If the claimant chooses option i) they will comply with the condition 2(h) of Notfn No.27/2012-CE(NT) but will

be hit by condition 2(g) because the balance comes to NIL at the end of the quarter. By choosing option ii) the claimant fails to comply with condition 2(h) but will not be hit by condition 2(g). It is seen that either way compliance of both the conditions together is not possible. Therefore, a judicious reading of the Notification makes it amply clear that the safeguards, conditions and limitations are prescribed not to deny the rightful claims of the claimant but to ensure that no claimant unduly enriches themselves by claiming refund from the Government as well as carry their balance forward in their returns.

10. Thus, I find that by not carrying forward the balance, it appears that the amount claimed as refund can be construed to be debited. Also, having filed the refund claim post GST but within the relevant date for filing the claim, I find that the claimant was not in a position to satisfy both the above said conditions of the impugned notification.

11. I also observe that the refund of Cenvat Credit under Rule 5 of Cenvat Credit Rules 2004 read with Notification 27 of 2012 is otherwise a legitimate export incentives given to an exporter of service and goods such legitimate export incentives should not be denied merely because of intervening changes i.e. coming into force of GST regime. It is also the admitted fact that the appellant would otherwise not been able to utilize the credit of tax under the provisions of GST regime. For this reason also the legitimate export incentives should not have been denied to the

appellants. I draw my support from the decision relied upon by the appellant in the case of DNB (supra) the Hon'ble High Court has clarified that due to the facts of not debiting the refund claim in the ST-3 Return and not carrying the balance forward in Tran – 1 by not filing the Tran-1 return it shall be condition No.2 (g) of the Notification will be applicable. The Hon'ble Court has held that against the backdrop of extra ordinary situation that has arisen with the implementation of GST the assessee are left with no option to satisfy both the conditions i.e. 2 (g) and 2 (h) simultaneously. The only thing held is to ensure that the assessee has not unduly enriched themselves by simultaneously getting the refund sanctioned and also by carrying the balance forward. The above recorded admitted facts are sufficient to reach the said verification in favour of appellant. Accordingly, I am of the opinion that emphasis on compliance of condition No.2 (h) of the Notification is absolutely wrong when admittedly the compliance of condition 2(g) of the same Notification has duly been made by the appellant.

12. Coming to the another ground of rejection i.e. change of name of the appellant in various invoices, there is nothing on record produced by the Department that the different names in the different invoices pertains to the different assessees. The appellants case is that all the invoices are in the name of one company only except having the typographical errors in the name of the company mentioned in those invoices. The table as annexed with the synopsis with respect to several invoices has

been impressed upon with the mention that the said table has also been mentioned by the adjudicating authorities below. It is mentioned that complete name of the appellant is reflected in invoice at item No.3, 8, 10 & 12 of the said table. Word 'software' is missing from the name of the appellant in invoice at item No.5, 7, 9 & 11. Rest of the invoices has been complete name of the appellant. In the absence of the evidence by Department as mentioned above, all invoices are held to have been issued in the name of one single company, I draw my support from the decision of this Tribunal in **DBOI Global Services (supra)** case wherein it has specifically and clearly been held that where different names are mentioned in the invoices, unless there is some evidence that those are issued to different persons, it has to be taken that the invoice pertains to be same assessee. The substantial benefit as that of refund cannot be denied based on the said ground.

13. In view of the above discussion, I hold that rejection of refund claim of the appellant on both the grounds is not sustainable. Order under challenge is accordingly, set aside. Consequent thereto, appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita