CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

Service Tax Appeal No. 30112/2019
(Arising out of Order-in-Appeal No. HYD-SVTAX-RRC-APP-050-18-19 (APP-1), dated 31.10.2018 passed by Commissioner of Customs & Central Excise, Hyderabad)

Incnut Digital Pvt. Ltd. .. **APPELLANT**
Plot No. 12, 3rd floor, Raj Cyber Vihar,
Huda Techno Layout, Sector-11,
Hightech City, Madhapur,
HYDERABAD – 500 081.
Telangana

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Rangareddy GST
Posnet Bhavan, Ramkoti,
HYDERABAD – 500 001.
Telangana

APPEARANCE:
Ms. Y. Siri Reddy, Advocate for the Appellant
Shri C. Mallikharjun Reddy, Superintendent/AR for the Respondent.

Coram:
Hon'ble MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.A/30733/2019

DATE OF HEARING: 13.08.2019
DATE OF DECISION: 13.08.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

1. This appeal is filed against Order-in-Appeal No. HYD-SVTAX-RRC-APP-050-18-19 (APP-1), dated 31.10.2018.

2. The appellant, an exporter of services, filed an application for refund of accumulated CENVAT Credit to the tune of Rs.31,34,531/- under Rule 5 of CENVAT Credit Rules, 2004, read with notification No. 27/2012-CE(NT), dated 18.06.2012, for the period October 2016 to December 2016.

3. A show cause notice was issued by the department and after following due process, the original authority sanctioned the refund claim partly and rejected the claim of Rs. 9,42,363/- on the ground that the refund application was filed beyond the time limit of one year specified under Notification No. 27/2012-CE(NT).

4. Aggrieved, the appellant appealed before the first appellate authority who upheld the order of the lower authority and dismissed the appeal. Hence this appeal.

5. Ld. Counsel for the appellant submits that for the purpose of calculating the turnover of claiming refund under Rule 5 of CCR 2004, the formula to be used is "Export Turnover/Total Turnover x net CENVAT Credit". The term 'Export Turnover' is defined as "payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period." She would submit that there is no dispute with

regard to their claim that the export turnover in their refund application was calculated accordingly. As far as the limitation of one year is concerned, she would submit that notification No. 27/2012-C.E (N.T), dated 18.06.2012 was amended by notification No. 14/2016-C.E(N.T), dated 01.03.2016 and thereafter the time limit is to be calculated as under:

"In case of service provider, before the expiry of one year from the date of

(a) Receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment or

(b) Issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice."

6. In their case she would submit that although the services were rendered during October to December 2016, the first payment with respect to these services was received only on 25.11.2016 and they filed refund application on 31.10.2017, well before the expiry of one year from this date. Therefore, in terms of notification No. 27/2012-CE(NT), dt. 18.6.2012 as amended, the entire refund application was filed within time limit and therefore refund should not have been rejected. She further submits that for subsequent periods, the original authority partly rejected their refund applications but the First appellate authority vide Order-in-Appeal No. HYD-SVTAX-RRC-AAP-072-18-19(APP-I), dated 30.01.2019 allowed their appeals and remanded the matter to the original authority for denovo decision in the light of the amended notification. She would therefore pray that their appeal

may be allowed and if necessary the matter may be remanded to the original authority for decision in terms of Notification No. 27/2012-CE(NT) as amended by Notification No. 14/2016-CE(NT) which was applicable during the relevant period.

7. Ld. DR reiterates the findings of the lower authority and submits that before the first appellate authority, the appellant had not argued on the ground that the period of limitation for one year as per notification No. 27/2012-CE(NT) as amended by notification No. 14/2016-CE(NT), dt. 01.03.2016, was clearly within the period of limitation. He draws the attention of the Bench to Para 4 of the impugned order which reads as follows:

> *"When the case was posted for hearing on 26.10.2018, Ms. Y.Siri Reddy, Advocate appeared on behalf of the appellants and emphasized that the Hon'ble Tribunal has, in the decisions referred in the appeal memorandum held that for the purposes of computation of relevant date, the date of FIRC should not be taken; instead, the last date of the quarter for which the claim had been filed should be the relevant date. Attention was drawn to the decision of the Hon'ble Tribunal in the case of Oceans Connect India Pvt. Ltd. vs. CCE, Pune-III [2016(46)STR 858 (Tri.-Mum.)]. Accordingly, she requested to set aside the impugned order and order refund of the amount rejected by original authority."*

Hence, the first appellate authority has decided the matter accordingly.

8. I have considered the arguments on both sides and perused the records. The claim has been filed for the period October 2016 to December

2016. According to the Ld. Counsel, the first payment was received on 25.11.2016 and the refund claim was filed on 31.10.2017, which squarely places the application for refund within the normal period of limitation and hence the appellant's appeal needs to be allowed. For the sole purpose of factual verification of the dates and decision in terms of notification No. 27/2012-CE(NT) as amended by Notification No. 14/2016-CE(NT), dt. 01.03.2016, the matter is remanded to the original authority. He should decide the matter after following principles of natural justice.

9. The appeal is allowed by way of remand to the original authority.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg