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

Single Member Bench

Court – I

Service Tax Appeal No. 30791 of 2018

(Arising out of Order-in-Appeal No.HYD-SVTAX-RRC-APP-221-17-18 (APP-I) dt.26.03.2018 passed by CC & CT (Appeals-I), Hyderabad)

Ineda Systems Pvt Ltd,
E-Park, 11th Floor, Plot No.1, Jubilee Gardens,
Kondapur, Cyberabad, Hyderabad – 500 081 **......Appellant**

VERSUS

Commissioner of Central Tax,
Rangareddy - GST
Posnett Bhavan, Ram Koti,
Hyderabad, Telangana – 500 001 **......Respondent**

with

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Appearance

Shri K. Sivaraman, Chartered Accountant for the Appellant.
Shri C. Mallikarjun Reddy, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/31116-31118/2019

Date of Hearing: 03.12.2019
Date of Decision: 03.12.2019

[Order per: P.V. SUBBA RAO.]

1. These appeals are filed against impugned Order-in-Appeal No. HYD-SVTAX-RRC-APP-221-223-17-18 (APP-I) dt.26.03.2018.

2. The appellants are engaged in providing Information Technology services and had exported such services. They had filed a refund claim seeking refund of accumulated Cenvat credit for three quarters i.e.,

a) July, 2016 to September, 2016 – Rs.11,35,911/-
b) April, 2016 to June, 2016 – Rs.12,17,983/-
c) January, 2016 to March, 2016 – Rs.12,99,680/-.

3. These refund claims were filed under Rule 5 of Cenvat Credit Rules (CCR), 2004 read with Notification No. 27/2012-CE (NT) dt.18.06.2012. After due process, learned original authority has sanctioned the refunds of Rs.11,17,614/- vide Order-in-Original (OIO) No.79/2017-18 dt.22.08.2017. The department filed an appeal against this order to the extent of Rs.4,02,112/- pertaining to two invoices which were filed beyond the period of limitation. The first appellate authority modified the order of the lower authority to the extent of this amount where the refund claim was filed beyond the period of limitation prescribed under Notification No.27/2012-CE (NT).

4. With respect to the 2nd quarter, the original authority vide OIO No.100/2017-18 dt.29.08.2017 granted refund of Rs.12,17,983/- against

which the department filed an appeal before the first appellate authority on the ground that with respect to three invoices the refund claim was filed beyond the period of limitation. The first appellate authority allowed the appeal of the revenue and held refund to this extent as was ineligible.

5. With respect to 3rd quarter, the original authority sanctioned refund of Rs.12,99,680/- vide OIO No.101/2017-18 dt.29.08.2017. The department appealed against this OIO on the ground that in respect of four invoices the refund claim was filed beyond the period of limitation of one year. The first appellate authority allowed the appeal of the revenue and disallowed the refund to the extent it was filed beyond the period of one year.

6. Aggrieved by these Orders-in-Appeals of the first appellate authority, the present appeals are filed. After hearing both sides and perusing the records, I find that the issue revolves around the refund of Cenvat credit under Rule 5 of CCR, 2004 which reads as follows:

> *"**Rule 5.Refund of CENVAT credit.** -*
>
> *Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,*
>
> *(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or*
>
> *(ii) service tax on output service,*
>
> *and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:*
>
> ***Provided** that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.*
>
> ***Provided** further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.*
>
> *Explanation: For the purposes of this rule, the words "output service which is exported" means the output service exported in accordance with the Export of Services Rules, 2005."*

7. The procedure, safeguards, conditions and limitations with respect to claim of refund of Cenvat credit are prescribed by Notification No.27/2012-CE (NT) dt.18.06.2012 which reads as follows:

*"**Cenvat credit — Procedure for Refund — Notification No. 5/2006-C.E. (N.T.) superseded***

In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules"), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 5/2006-Central Excise (N.T.), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely :-.

***2. Safeguards, conditions and limitations.** - Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely :-*

(i) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter :

***Provided** that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.*

(ii) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(iii)the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

(iv)the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(v) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(vi)for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(vii) 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.

(viii) 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.

(ix)In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

3. Procedure for filing the refund claim. –

(a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A annexed to the notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-

(i) the factory from which the final products are exported is situated.

(ii) the registered premises of the provider of service from which output services are exported is situated.

(b) [The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under :

(i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);

(ii) 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.]

[as amended by Notification No. 14/2016-CE (NT) dt.1.3.2016]

(c) The application for the refund should be signed by-

(i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;

(ii) any partner in case of a partnership firm;

(iii) a person authorized by the Board of Directors in case of a limited company;

(iv) in other cases, a person authorized to sign the refund application by the entity.

(d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

(e) The refund claim shall be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

(f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

(g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be."

8. Para 3(b)(ii) of this notification requires the claims of refunds to be filed before one year from the date of receipt of payment in convertible

foreign exchange in cases of export of services. ST/30791/2018 is filed against OIA No.HYD-SVTAX-RRC-APP-221-17-18 (APP-I) dt.26.03.2017. While deciding the department's appeal by this impugned order, learned first appellate authority has found that further refund claims for the period April, 2016 to June, 2016 in respect of three invoices viz., INEDA/2015-16/009, INEDA/2015-16/010 & INEDA/2015-16/011, the foreign exchange was realized on 27.04.2016, 27.05.2016 & 28.06.2016 respectively but the claim was filed only on 19.7.2017. Therefore, he held that the claim was filed beyond the period of one year from the receipt of foreign exchange. During hearing before this bench, learned Chartered Accountant representing the appellant presented various data but could not show that the foreign exchange in respect of these three invoices were received on any other date other than the dates mentioned above or that the refund claim was filed prior to the date indicated above.

9. In respect of ST/30792/2018 filed against OIA No. HYD-SVTAX-RRC-APP-222-17-18 (APP-I) dt.26.03.2017, the first appellate authority has found that in respect of four invoices pertaining to January, 2016 to March, 2016, viz., INEDA/2015-16/006, INEDA/2015-16/007, INEDA/2015-16/008 & INEDA/2015-16/009 the remittances of foreign exchange were received only on 27.01.2016, 25.02.2016 & 29.03.2016 and the claim was filed on 27.04.2017 which is beyond the period of one year. He, therefore, disallowed the refund of Cenvat credit under Rule 5 of CCR, 2004 to this extent. During the hearing, learned CA representing the appellant could not produce any evidence to dispute these facts.

10. In respect of ST/30793/2018 filed against OIA No. HYD-SVTAX-RRC-APP-223-17-18 (APP-I) dt.26.03.2017, he found that in respect of two invoices for the quarter July, 2016 to September, 2016 viz., INEDA/2015-16/011 & INEDA/2016-16/012 the foreign exchange has been realized on 27.04.2016, 27.05.2016 & 28.06.2016 but the claim was filed only on 28.07.2017 beyond the period of one year. Learned CA could not prove that these facts were incorrect through any documents.

11. In view of the above, I find that the first appellate authority has correctly modified the order of the lower authority only denying the refund

of Cenvat credit under Rule 5 of CCR, 2004 to the extent the refund claims were filed beyond the period of one year from the date of realisation of foreign exchange in terms of the notification. He did not deny the refund of entire Cenvat credit. I, therefore, find that the orders of the first appellate authority were fair and reasonable and perfectly according to law and call for no interference whatsoever.

12. The impugned orders are upheld and the appeals are rejected.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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