

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

Single Member Bench
Court – I

Service Tax Appeal No. 30086 of 2022

(Arising out of Order-in-Appeal No.67/2013 (G) CE dt.31.10.2013 passed by Commissioner (Appeals), Customs & Central Excise, Guntur)

OSI Systems Pvt Ltd

Orion Block, Phase-III, Software Unit
Layout, Madhapur, Hyderabad – 500 081

.... **Appellant**

VERSUS

**Commissioner of Central Tax
Rangareddy - GST**

Posnett Bhavan, Ramkoti,
Hyderabad, Telangana – 500 001

.... **Respondent**

Appearance

Ms Siri Reddy, Advocate for the Appellant.
Shri S. Hanuma Prasad, AR for the Respondent.

Coram:

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

FINAL ORDER NO. A/30094/2022

Date of Hearing: 16.09.2022

Date of Decision: 16.09.2022

[Order per: ANIL CHOUDHARY]

Heard the parties. The issue involved herein is denial of refund of Cenvat credit with regard to service tax paid under reverse charge mechanism after 30.06.2017.

2. The brief facts are that the appellant was an assessee under the service tax regime and they migrated to GST regime and they also filed TRAN-1 for taking forward the credit which was lying in their Cenvat credit register. Subsequently, it was pointed out by the Revenue/ audit objection that the appellant is required to pay an amount of Rs.1,71,035/- on account of input services under reverse charge mechanism. The appellant deposited the said service tax on 01.08.2018. Further, as the appellant could not take credit of this amount in the GST regime, nor they could revise their TRAN-1 form, as time for which it has expired, the appellant filed application for refund as they could not take credit of the same in their Cenvat register under service tax provisions. The adjudicating authority rejected the claim

on the ground that there was no statutory provision available under the existing law or in the CGST Act to grant refund. The refund was rejected both on merits as well as on limitation.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to observe that the appellant is definitely entitled to credit of the service tax deposited in August, 2018. He further observed that there is no provision under Cenvat Credit Rules to allow them refund of service tax paid under reverse charge mechanism, in case the tax payer is not in a position to take credit. He further observed that the refund is payable subject to the aspect of limitation and unjust enrichment under section 11B.

4. Learned counsel for the appellant assailing impugned order states that the transitional provision under section 142(3) of the CGST Act provides that every claim for refund filed by any person before, on or after the appointed date, for refund any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of the existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained in section 11B(2) of Central Excise Act (unjust enrichment).

5. Learned counsel states that under the facts and circumstances, there is no limitation applicable and further there is no question of unjust enrichment as the tax under reverse charge mechanism has been paid out of pocket by the appellant. Accordingly, she prays for consequential benefits.

6. Learned Authorised Representative for the revenue relies on the impugned order. He further relies on the ruling of the Hon'ble Madras High Court in Writ Appeal reported at 2022 (8) TMI 1143, wherein the assessee had paid service tax relating to the period April 2016 to June 2017, in May, 2018 and was unable to avail credit of service tax paid by them. The Hon'ble High Court held that it is an admitted fact that the assessee is eligible to claim Cenvat credit under the erstwhile law, prior to 30.06.2017, but they were unable to claim due to transitional provision w.e.f. 01.07.2017. It is further noticed that the tax was paid pursuant to departmental audit objection. Hon'ble High Court held that Revenue have admitted that

appellant is entitled to Cenvat credit of the tax paid but were unable to claim the credit due to imposition of GST regime. Accordingly, the Hon'ble High court rejected the order of the rejection of refund claim and remanded the matter for fresh adjudication with directions. The Hon'ble High Court also directed the respondent/Revenue to consider the refund application under section 142(3) of the CGST Act, to dispose of the same in accordance with the law.

7. Having considered the rival contentions, I find that under transitional provision under section 142(3) of CGST Act, the limitation has been done away with and the only thing required for refund under the facts and circumstances is to see whether unjust enrichment is attracted. In the facts and circumstances, I hold that no unjust enrichment is attracted as the appellant have admittedly paid service tax in August, 2018 out of their own pocket. Accordingly, I allow this appeal and set aside the impugned order. The adjudicating authority is directed to grant refund within a period of 60 days from the date of receipt of copy of this order along with interest under section 11BB of the Central Excise Act.

8. Appeal is allowed.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)