IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75798 of 2024

(Arising out of Order-in-Appeal No.208/ST-Kol/ST/Kol-S/2023-24 dated 06.12.2023 passed by the Commissioner of CGST & CX Kolkata Appeals-I Commissionerate GST Bhawan 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. IPSEN Technologies Private Limited **: Appellant**
Diamond Harbour Road, Kanchowki
Bhasa, 24 Parganas (South)
West Bengal-743 503

VERSUS

Commissioner of CGST & CX **: Respondent**
Kolkata South Commissionerate
180, Shantipally, Rajdanga Main Road,
Kolkata-700107

APPEARANCE:

Shri Dipankar Majumdar, Advocate
Ms. Diya M, Advocate
For the Appellant

Shri Debapriya Sue , Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77055/2024

DATE OF HEARING / DECISION: 04.09.2024

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order, wherein cash refund has been denied by the authorities below.

2. The facts of the case are that the appellant is engaged in the activity of manufacture and sale.

1. The Appellant, M/s Ipsen Technologies Private Limited is engaged in the activity of manufacture and sale of furnaces, tailor-made designs and manufacturing of heat *treatment furnace, and is also engaged in election, commissioning and installation of such furnaces. The Appellant is a wholly owned subsidiary of Ipsen Germany.*

2. Ipsen Malaysia was holding the distribution and agency rights in South East Asia and during FY 2016-17 Ipsen India for having better position in the market intended to procure the said distribution and agency rights for a period of 10 years from Ipsen Malaysia. For such transfer of rights Ipsen India entered into a License agreement dated 01st February, 2017 with Ipsen Malaysia and other Ipsen Group Entitics.

3. Vide the said licence agreement, Ipsen India was to take up the agency from Ipsen Malaysia by paying a license fee of EUR 14,60,000 and an appropriate invoice being Invoice No. IPDR 17/0001, dated 17 March 2017 (page 67 of the appeal memorandum) was also raised to such effect. The said license fee was subject to service tax under reverse charge mechanism being a service received from non taxable territory.

4. The applicable service tax of Rs. 1,47,57,680/-, Swachh Bharat Cess of Rs. 5,27,060/- and Krishi Kalyan Cess of Rs. 5,27,060/- along with applicable interest was paid vide GAR-7 Challan Nos. 00821 and 00261 dated 26 September 2017 and 10 October 2017.

5. The service tax paid under reverse charge mechanism on such license fee was eligible as CENVAT credit to the Applicant. However, as with effect from 1 July 2017, GST was implemented in suppression of service tax, and as the said service tax was paid in a delayed manner and after implementation of GST the Appellant had no opportunity to avail the said eligible CENVAT credit of the service tax so paid and utilize the same for further payment of service tax or central excise duty

6 Therefore, in terms of the applicable transitional provisions under GST, ie, Section 142(3) and Section 142(9)(b) read with Section 174(2)(c) the Appellant applied for refund of CENVAT credit of Service Tax paid under reverse charge mechanism vide refund application dated 7 March 2018 filed in the prescribed form R. (page 50-53 of the appeal memorandum) Through the said refund application, the appellant prayed for refund of Rs. 1,52, 84,740/- (Service Tax of Rs. 1,47, 57,680/- & Krishi Kalyan Cess of Rs. 5, 27,060/-).

7. Such refund application of the Appellant stands rejected as on date. Initially a SCN was issued seeking as to why the refund should not be denied for alleged violation of Rule 7 of the Point of Taxation Rules, 2011, read with Rule 7B of Service Tax Rules, 1994 and alleged misinterpretation of the instructions in Board Circular No. 207/5/2017-Service Tax dated 28

> *September 2017, read with Section 142(9)(b) of the CGST Act 2017. The Appellant duly replied to such SCN. However, vide the Order in Original No. 303-R/AC/CGST & CX/BPD/18-19 dated 28 February 2019 the Ld. Assistant Commissioner, CGST & CX., Bishnupur Division, Kolkata South Commissionerate, Kolkata rejected the refund claim of the Applicant.*
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> *8. Being aggrieved the Appellant preferred an Appeal before the Commissioner of CGST & CX., Appeal - 1 Commissionerate, Kolkata challenging the said Order in Original dated 28 February 2019. However, the said Appeal was rejected by the first appellant authority vide Order in Appeal No. 208/ST-Kol/ST/Kol-S/2023-24 dated 06.12.2023 wherein the order in original was upheld and the refund claim of the Applicant was rejected.*
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> *9. Aggrieved by such order of the First Appellant Authority, the Appellant preferred the present appeal before this Hon'ble Tribunal on the following grounds.*

3. The appellant submits that the issue is no longer *res integra* in the case of *M/s Circor Flow Technologies India Private Ltd Vs. The Principal Commissioner of GST & Central Excise, Coimbatore [(2022-VIL-15-CESTAT-CHE-ST)]; and OSI Systems Pvt. Ltd. Vs. CCT Rangareddy [2022 (9) TMI 801-CESTAT Hyderabad];*, and the appellant is eligible for refund in terms of Section 142(3) of the C.G.S.T. Act read with Section 174(2)(c) of the Act. They also submit that they are eligible for refund of CENVAT Credit in terms of Section 142(9)(b) of the C.G.S.T. Act.

4. On the other hand, the Ld. Authorized Representative appearing for the Revenue has reiterated the findings in the impugned order.

5. Heard the parties.

6. We find that the issue involved in this matter has been examined by the Tribunal in the case of *M/s Circor Flow Technologies India Private Ltd Vs The Principal Commissioner of GST & Central Excise,*

Coimbatore [2022-VIL-15-CESTAT-CHE-ST); 2021 SCC Online CESTAT 4175], wherein this Tribunal examined this issue and observed as under: -

> *9. From the facts narrated above, it is brought out that appellant has paid the service tax voluntarily under self-assessment. The tax is paid under reverse charge mechanism for the services received by them from Foreign Service provider. On perusal of para 6.4 of the 010, it is seen that the adjudicating authority has denied refund of credit holding that the service tax has been paid voluntarily and also that no credit is available in GST regime. Section 174(2) of the GST Act has already been reproduced as above. It says that the amended Act shall not affect any right, privilege, obligation, or liability acquired, accrued or Incurred under the amended Act or repealed Acts. It is clear that the liability, if any, under the erstwhile law of Finance Act, 1994 to pay service tax would continue even after the introduction of GST. Conversely, the right accrued under the said Act in the nature of credit available under CCR 2004 also is protected. If the assessee has to pay service tax even after the introduction of GST, their right to avail the credit on the same cannot be denied.*
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> *10. In the case of Adfert Technologies Pvt. Ltd. v. UOI 2020 (32) GSTL 726 (P & H) it has been held that transitional credit being a vested right, it cannot be taken away on procedural or technical grounds. The said order was upheld by the Hon'ble Supreme Court as reported in 2020 (34) GSTL J 138 (SC). The Hon'ble jurisdictional High Court in the case of Tara Exports v. UOI 2019 (20) GSTL 321 (Mad.) has held that GST laws contemplate seamless flow of tax credits on all eligible Inputs. In various decisions, It has been held that substantive right of credit cannot be denied on account of procedural grounds. In the case of Leo Prime Comp. Pvt. Ltd. v. Dy. Commissioner of Central Excise Puducherry, (2020) 373 ELT 820 (Mad.), it was held that accumulated credit cannot be said to get lapsed.*
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> *11. Section 142(3) of GST Act provides how to deal with claims of refund of service tax of tax and duty/credit under the erstwhile law. It is stated that therein that such claims have to be disposed in accordance with the provisions of existing law and any amount eventually accruing has to be paid in cash. 12. In the present case, there is no allegation that the credit is not eligible to the appellant. It is merely stated that tax has been pald voluntarily and therefore credit is not available under the GST regime. Though credit is not available as Input Tax Credit under GST law, the credit under the erstwhile Cenvat Credit Rules is eligible to the appellant. Such credit has to be processed under Section 142(3) of GST Act, 2017 and refunded in cash to the assessee.*
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> *13. From the discussions made above, the principles laid down in the decisions cited above, I am of the view that rejection of refund claim cannot be justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any.*

6.1. Further, in the case of *OSI System Pvt. Ltd. v. CCT, Rangareddy [2022 (9) TMI 801 – CESTAT Hyderabad.* This issue has been examined by this tribunal and it was observed as under: -

> *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, hold that unjust enrichment is attracted as the appellant have admittedly paid service tax in August, 2018 out of their own pocket. Accordingly allow the 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 1188 of the Central Excise Act.*

7. We find that in this case also, the appellant paid the license fees on 17th March, 2017, when the erstwhile provisions of service tax was in force, but reversed the credit on 26th September, 2017 and October 2017. We observe that the issue of time-limit has been examined by this Tribunal in the case of *OSI System Pvt. Ltd. (supra)* wherein this Tribunal found that for transitional provisions under Section 142(3) of the C.G.S.T. Act, the limitation has been done away with and only thing required for refund is whether, under the facts and circumstances of the said case, unjust enrichment is attracted or not. In this case also, the refund claim has been rejected as time barred. The same therefore cannot be rejected in the light of the decision of this Tribunal in the case of *OSI System Pvt. Ltd. (supra)*

7.1. The only issue to be seen is whether bar of unjust enrichment is applicable to the facts of this case. In that circumstances, we set aside the impugned order and allow the appeal, with a direction to the adjudicating authority to entertain the refund claim filed by the appellant on its own merits.

8. In these terms, the appeal is disposed of.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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