IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO.ST/88388/2018

(Arising out of Order-in-Appeal No. MKK/65/RGD-APP/2018-19 passed by the Commissioner of Central Excise (Appeal), Navi Mumbai)

M/s. CROWDFIRE INDIA P. LTD. : **Appellant**
2303-2308, Cyber One, Sector 30A,
Plot 4 & 6, Vashi,
Navi Mumbai, Maharashtra 400 703

VS

C.C.E. BELAPUR : **Respondent**
C.G.O. Complex, 1st Floor,
Sector 10, C.B.D. Belapur,
Navi Mumbai, Maharashtra 400 614

Appearance

Shri Kisan Pandya, C.A. for Appellant

Shri O Shivdikar, AC (A.R) for Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

FINAL ORDER NO. A/86371/2019

Date of hearing : 22.07.2019
Date of decision : 22.07.2019

Per : **Dr. D.M. Misra, Member (Judicial)**

This Appeal is filed against OIA No.MKK/65/RGD-APP/2018-19 passed by the Commissioner of Central Excise (Appeal), Navi Mumbai.

2. Briefly stating the facts of the case are that the Appellant are engaged in providing software developments and support services to

their foreign clients. They have filed cash refund claim of accumulated Cenvat Credit in terms of Rule 5 of the Cenvat Credit Rule 2004 amounting to Rs.5,54,596/- for the quarter October 2015 to December 2015. Since the refund claim was filed on 13.01.2017 i.e. beyond the period prescribed under Section 11B of CEA 1944, the refund claim was rejected on the ground of limitation. Aggrieved by the said order the Appellant filed an Appeal before the Learned Commissioner (Appeals), who in turn, rejected the appeal. Hence the present appeal.

3. The Learned Advocate for the Appellant has submitted that due to the error in the server, the refund claim could not be filed in time resulting in to the present delay. It is his contention that therefore the delay in filing the refund claim be condoned.

4. Per Contra, the Learned A.R. for the Revenue has submitted that the period of limitation prescribed under Section 11B of CEA, 1944 cannot be condoned. In support he has referred to the judgement of the Hon'ble Madras High Court in the case of Commissioner of Central Excise, Coimbatore v/s. GTN Engineering (I) Ltd 2012(281) ELT 185 (Mad.). The said judgement has been followed by this Tribunal in the case of Technocraft Industries (I) Ltd v/s. Commissioner of Central Excise, Thane - I, vide Order No.A/85514/2019 dated 13.03.2019.

5. I have considered the submission advanced by both sides. The short issue involved for consideration is whether the refund claim is barred by limitation. It is not in dispute that the Appellant had claimed cash refund of the Cenvat Credit on export of services for the

relevant period i.e. October 2015 to December 2015. The refund claim was filed on 13.01.2017. The Learned Advocate has argued that due to server error, refund claim could not be uploaded. I find that the quarterly refund claim requires to be filed within one year as prescribed under Section 11B of CEA, 1944. The said period cannot be relaxed as held by the Hon'ble Madras High Court in GTN Engineering case. The said principle has been followed by this Tribunal in Technocraft Industries case (supra). Analyzing the issue this Tribunal observed as follows :

"The short issue involved in the present appeal for determination is whether the cash refund claim accumulated CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 for the period January to Sept, 2008 filed by the appellant on 3.9.2010 is barred by limitation or otherwise. Undisputedly, the exports were carried out from the date of filing of refund claim. The contention of the appellant that the period prescribed under Section 11B to claim the cash refund of the accumulated Cenvat credit is not applicable. The Revenue relied upon the judgment of Hon'ble Madras High Court in GTN Engineering (supra), which was subsequently followed in Hyundai Motors' case (supra). WE find that the issue has been considered at length by the Hon'ble Madras High Court in the case of GTN Engineering (supra) and observed as follows:

> "*14. The said notification prescribes a period of one year, as provided under section 11B of the Central Excise Act, for the purpose of making application in Form-A alongwith prescribes enclosures and also the relevant extracts of the records maintained under the Central Excise Rules, 2002. Cenvat Credit Rules 2004 or service Tax Rules, 1994 in original. That application should be filed before the Deputy Commissioner of Central Excise, as the purpose of making claim for refund of CENVAT Credit Rule 5 should be made applicable. It is the contention of the learned counsel for the assessee that the provisions defining relevant date does not cover the claim for refund of CENVAT credit. We may point out that when a statute empowered for such claim, the said provision must be read to find out as to the relevant date. Rule 5 specifies that "where any input or input service is used in the manufactures 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."*

15. A reading of the above rule, though there is no specific relevant date is prescribed in the notification, the relevant date must be the date on which the final products are cleared for export. If any other conclusion is arrived, it will result in disentitling any person to make a claim of refund of CENVAT credit. Admittedly, the respondent has made a claim only invoking Rule 5 of the CENVAT Credit Rules, 2004. In that view of the matter, there cannot be any difficulty for us to hold that the relevant date should be the date on which the export of the goods was made and for such goods, refund of CENVAT credit is claimed.

16. The learned counsel for the respondent would rely upon a judgement of the Gujarat High Court reported in 2008(232)E.L.T. 413 (Guj.) (Commissioner of Central Excise and Customs, Surat–I v. Swagat Synthetics). That was a case relating to sub-rule (13) of Rule 57F of Central Excise Rules, 1944 which reads as under:

> *"(13) Where any inputs are used in the final products which are cleared for export under bond or used in the intermediate products cleared for export in according with sub-rule (4), the credit of specified duty in respect of the inputs so used shall be allowed to be utilised by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette."*
> *The said rule does not prescribe any time-limit. In the absence of such prescription as to the limitation, the Gujarat High Court has held that the claim of refund could not be rejected on the ground of limitation.*

17. The learned counsel would also rely upon a Judgement of Madhya Pradesh High Court at Indore reported in 2009 (236) E.L.T. 248 (M.P.) (ST) India Ltd v. Commissioner of Customs and Central Excise, Indore). In that case, though the Court has held that Clause 6 of Appendix read with Section 11B of Central Excise Act, 1944 cannot be made applicable insofar as the period of limitation is concerned when a claim for CENVAT credit is made, a reading of the said provision shows that there is no reference to Rule 5. With great respect, we are not in agreement with the said judgement as the judgement was rendered based on the rules and the notification which are procedural in nature. As we have found that but for the provision of Rule 5 r/w notification, the respondent could not have filed the application for refund, he has to satisfy the limitation clause as provided under Section 11B of the Act.

> *18. In view of the above, the order of CESTAT holding that the limitation is not applicable to the facts in question to the case has to be set aside. Accordingly, the same is set aside".*

Following the aforesaid precedent the impugned order is upheld and the appeal being devoid of merit is dismissed.

(Dictated & pronounced in open Court)

(Dr. D.M. Misra)
Member (Judicial)

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