CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85753 OF 2019

[Arising out of Order-in Appeal No: MKK/348-350/RGD APP/2018-19 dated 30th November, 2018 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals),Raigarh]

3D PLM Software Solutions Limited
Plot No. 15/B, Pune Innfotech Park, MIDC, Hinjewadi,
Pune-411 057 … ***Appellant***

versus

Commissioner of CGST & Central Excise
10th Floor, Satra Plaza, Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai- 400 705 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 85755 OF 2019

[Arising out of Order-in Appeal No: MKK/348-350/RGD APP/2018-19 dated 30th November, 2018 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals),Raigarh]

3D PLM Software Solutions Limited
Plot No. 15/B, Pune Innfotech Park, MIDC, Hinjewadi,
Pune-411 057 … ***Appellant***

versus

Commissioner of CGST & Central Excise
10th Floor, Satra Plaza, Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai- 400 705 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 85756 OF 2019

[Arising out of Order-in Appeal No: MKK/348-350/RGD APP/2018-19 dated 30th November 2018 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh]

3D PLM Software Solutions Limited
Plot No. 15/B, Pune Innfotech Park, MIDC, Hinjewadi,
Pune-411 057 … ***Appellant***

versus

Commissioner of CGST & Central Excise
10th Floor, Satra Plaza, Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai- 400 705 ***…Respondent***

APPEARANCE:

Shri Vinod Atwani, Charted Accountant with Ms Anindita Sarkar, Chartered Accountant for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85179-85181/2022

DATE OF HEARING:	25/02/2022
DATE OF DECISION:	25/02/2022

Three appeals, challenging order-in appeal no. MKK/348-350/RGD APP/2018-19 dated 30th November 2018 of Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh, are disposed off in the present proceedings that is before the Tribunal for continued denial of part of three claims for refund of accumulated credit of tax, paid on 'input service' deployed in rendering 'output service' that was exported between October 2015 and March 2017, even as some relief was allowed by the first appellate authority. The claims, preferred under rule 5 of CENVAT Credit Rules, 2004 and in accordance with the procedures prescribed in notification no. 27/2012-CE (NT) dated 30th June 2012, had been partially sanctioned by the competent authority and denial of ₹ 73,88,288, along with disallowance of entitlement to re-credit the rest, was, upon challenge, granted save for ₹ 19,73,306 which was not interfered with. In effect, the denial also carried with it the bar of re-credit thereto.

2. The scheme for eliminating the cascading effect of taxation envisages taking of credit in conformity with rule 3 of CENVAT Credit Rules, 2004 which, except for neutralization, in the specific circumstances enumerated therein owing to subsequent ineligibility, under rule 6 of CENVAT Credit Rules, 2004, constitutes a pool for payment of duties of central excise or service tax collected, as 'person liable to pay tax', from the recipient of goods or service, as the case may be. Exporters are, by exclusion from taxable event, unable to utilize accumulated credit and are, therefore, privileged by specific dispensation in the scheme to 'monetize' it with the prescribed computation method intended to approximate the credit attributable to the 'input' or 'input service' contributing to the exported 'output' or 'output service', as the case may. Implicit in the conceptual integrity of scheme and the specific relief of monetization accorded to exporters, who otherwise would have to bear the burden of tax

invoiced on them, is the continued accumulation of the credit that is disallowed, for one reason or other, from being monetized. It is also of interest to note that CENVAT Credit Rules, 2004 does empower disallowance of credit but in accordance with procedure laid down and that, while permission of competent authority is necessary for re-credit of such disallowed credit, no empowerment exists to bar restoration of non-monetized credit.

3. Learned Chartered Accountant appearing for the appellant contends that rule 5 of CENVAT Credit Rules, 2004 does not, apart from verification of export turnover, authorize disaggregation of data and, except by application of the formula prescribed thereon, permit scope for truncation of the claim. He argues that this privilege cannot be turned on its head to review entitlement to the credit already availed of and not sought to be disallowed under the recovery provision in rule 14 of CENVAT Credit Rules, 2004. Rule 5 of CENVAT Credit Rules, 2004, according to him, does not envisage detriment to the assessee other than refusal of monetization and that, as the show cause notice did not propose recovery of credit but only denial of monetization, the original authority and, by continuation thereof, the first appellate authority were in breach of principles of natural justice. He agreed that they had not placed this argument before the lower authorities as the absence of any proposal to that effect did limit the framework of the dispute itself.

4. He further submits that a substantial part of the denial for non-production of documents are not sustainable any longer owing to that deficiency having been since made good and that it is now possible for them to rebut the denial on account of bar of limitation of time.

5. Learned Chartered Accountant submits that the issue of disallowance of credit while disposing refund claims stands settled by the decision of the Tribunal in *3DPLM Software Solutions Limited v. Commissioner of Service Tax, Mumbai-VII [2018 (13) GSTL 325 (Tri - Mumbai)]* which has been reaffirmed in *Warburg Pincus India Pvt Ltd v. Commissioner of Service Tax, Mumbai [2018 (364) ELT 159 (Tri- Mumbai)]* and in *Qualcomm India Pvt Ltd v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad [2020(43) GSTL 402 (Tri- Hyd).*

6. According to Learned Authorized Representative, the show cause notice clearly proposes disallowance of credit which suffices as authority even in the absence of reference to the appropriate provisions for which reliance is placed on the decision of the Hon’ble Supreme Court in *Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd [1996 (82) ELT 441 (SC)]*. It was also pointed out that the observations in the impugned order for denial of refund are not, in a sense, objectionable as it is only now that appellant admits to be in possession of supportive documentation.

7. Having considered the rival submissions, and in the light of the decisions of the Tribunal, it is abundantly clear that recovery proceedings under, and in accordance with, rule 14 of CENVAT Credit Rules, 2004 is the sole authority for denial of credit that has been wrongly availed and such proceedings have nothing to do with export of goods or services. This is demonstrably clear from the general provisions of rule 3 and rule 14 of CENVAT Credit Rules, 2004 and the self-contained re-determination envisaged in rule 6 of the said Rules that can be enforced, once again and by specific provisioning, through rule 14 of CENVAT Credit Rules, 2004. Rule 5 of CENVAT Credit Rules, 2004 does not provide for such recovery of non-monetized credit; on the contrary, denial of refund concurrently retains credit to that extent.

8. Admittedly, this issue had not been raised in the proceedings before the first appellant authority. The outcome of the proceedings before the first appellate authority may well have been impacted by this proposition, along with the binding decisions, now put forth before the Tribunal. Furthermore, appellant also now claims to be in possession of documentation that could negate the denial of refund claim. Revenue has no dispute over any portion of the refund sanctioned by the lower authorities. In these circumstances, the Tribunal has been deprived of the wisdom and domain expertise of the first appellate authority insofar as the impugned order is concerned. A

fresh determination of the grounds of appeal, including the ones in the appeals now being disposed off, pertaining to the denial of refund, and bar on re-credit, of ₹ 19,73,306, is the appropriate course of action. To enable this, the matter is remanded back to the first appellant authority to ascertain applicability of the decisions of Tribunal to the consequences determined by the original authority of such portion of the claim for which documentary evidence prescribed in notification no. 27/2012-CE (NT) dated 30th June 2012 is presented.

9. Appeals are, thus, allowed by way of remand.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

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