

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Service Tax Appeal No. 86011 of 2020

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/43/2020-21 dated 17.06.2020 passed by the Commissioner of GST & CX (Appeals-III), Mumbai)

M/s. Karp Impex Ltd.

Appellant

GE 3051, Bharat Diamond Bourse,
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

Vs.

Commissioner of CGST & CE, Mumbai East

Respondent

9th Floor, Lotus, Parel (E), Mumbai 400 012.

Appearance:

Shri Jay Chheda, Advocate, for the Appellant

Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 11.01.2023

Date of Decision: 11.01.2023

FINAL ORDER NO. A/85036/2023

This appeal is directed against order in appeal No NA/GST/A-III/MUM/43/2020-21 dated 17.06.2020 of the Commissioner GST & CX (Appeals-III) Mumbai. By the impugned order while deciding the appeal filed by the revenue Commissioner (Appeal) held as follows:

"10. In view of the foregoing, I set aside the Order in Original No 21/Refund/SC/2018-19 dated 31.12.2018 passed by the Assistant Commissioner, CGST & CX, Division-IV, Mumbai East, Mumbai, in respect of M/s Karp Impex Ltd., situated at GE 3051, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East) Mumbai-400051, and allow the appeal filed by the Department holding the impugned refund claim as not maintainable."

2.1 Appellant had filed two refund claims as detailed in table below, in terms of the Notification No 41/2012-ST dated 29th June 2012.

Services- Technical Inspection and Certification			
S No	Period	Date of Filing	Amount
1	July 17-Sept 17	13.06.2018	17,49,237
2	Oct 17-Nov 17	26.09.2018	2,45,445
Total			19,94,682

2.2 The said refund claims were adjudged by the jurisdictional Assistant Commissioner stating as follows:

"7. I hereby sanction refund amount of Rs 19,30,237/- (Rupees Nineteen Lakhs Thirty Thousand Two Hundred and Thirty Seven Only) and reject an amount of Rs 64,625/- (Rupees Sixty Four Thousand Six Hundred and Twenty Five Only) under Section 93A of the Chapter V of the Finance Act, 1994 read with the provisions of Notification No 41/2012-ST dated 29.06.2012 as amended."

2.3 Revenue challenged the above order before Commissioner (Appeals) on the following grounds:

- i. The provision of Notification No 41/2012-ST dated 29.06.2012 ceases to be applicable from 01.07.2017.
- ii. The provision of time of supply of goods is applicable under Section 12 of CGST Act, 2017 for export of goods during the period of October to December 2017.
- iii. Under Section 16 of the IGST Act, GST is not applicable in India on exports.
- iv. Instead of following the provisions of CGHST Act, 2017, the appellant filed the refund claim under repealed Notification.

2.4 The appeal filed by the revenue was allowed by the Commissioner (Appeals) as per the impugned order in para 1, above.

2.5 Hence this appeal.

3.1 Have heard Shri Jay Chheda, Advocate for the appellant and Shri S B P Sinha, Superintendent, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- The right to rebate/ refund of the service tax paid has accrued to the appellant in the terms of the Notification No

41/2012-ST, as they had paid service tax on technical inspection and certification services, much before 01.07.2017. The right which had accrued would not be fettered by the subsequent events of introduction of GST regime and repeal of the said notification.

- Tribunal has in the following cases in similar situation held that the refund claim filed in terms of the provisions of the existing law- Chapter V of the Finance Act, 1994, shall be adjudged as per the provisions of the existing law:
 - Lifecell International Pvt Ltd [2022 (6) TMI 134 CESTAT-Chennai];
 - Chalet Hotels Ltd. [2022 (8) TMI 640 Karnataka High Court]
 - Indigo Tooling Pvt Ltd. [2022 (3) TMI 1100- CESTAT New Delhi]

3.3 Arguing for the revenue learned authorized representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Assistant Commissioner has in order in original recorded the findings as follows:

"5. I have gone through the refund claims and records of the case available with this office. On perusal of the documents I find that:

i) In terms of Notification No. 41/2012-ST dated 29.06.2012, as amended, the Central Government grants rebate of service tax paid on the taxable services which are received by an exporter of goods provided that-

- (a) the rebate claimed by the exporter shall be provided by way of refund of service tax paid on the specified service to its provider;*
- (b) the rebate shall be claimed by the exporter for the specified service received and used by him for export of the said goods;*
- (c) the exporter claiming the rebate has actually paid the service tax on the specified service to its provider;*

- (d) *no CENVAT credit of service tax paid on the specified service used for export of said goods has been taken under the CENVAT Credit Rules, 2004:*
- (e) *the claim for refund shall be filed within one year from the date of export of the said goods.*
- (f) *the rebate being claimed in this case is not a unit or developer of a Special Economic Zone.*

ii) Details of the LEO dates after considering the withdrawal are as under:

<i>Sr No</i>	<i>Period of refund claim</i>	<i>Date of filing of refund claim</i>	<i>Total refund claimed (In Rs.)</i>	<i>First LEO date of the period</i>
<i>1</i>	<i>July 2017 to Sept.2017</i>	<i>13.06.2018</i>	<i>17,49,237/-</i>	<i>04.07.2017</i>
<i>2</i>	<i>Oct. 2017 to Nov.2017</i>	<i>26.09.2018</i>	<i>2,45,445/-</i>	<i>04.10.2017</i>
		<i>Total Rs.</i>	<i>1994,682/-</i>	

From the above table, it is clear that the refund claim has been filed within the stipulated time period of one year as specified in the said Notification for the period July 2017 to September 2017 and for the period October 2017 to November 2017.

iii) The said claimant has claimed refund of service tax paid on "Technical inspection and Certification which are taxable services as the same are neither covered in negative list nor in any exemption notification. The said services are claimed to have been received by the claimant and used for export of goods beyond the place of manufacture for the said period as seen from the relevant input invoices issued by the service providers and details like (a) number and date of shipping bill, (b) description of goods exported (c) number and date of the invoice issued by the exporter relating to export of goods (d) details of all the charges, whether or not reimbursable, collected by the Service Provider of input services from the said claimant in relation to export of goods. As such the linkage of the above said services with the goods exported has been established. Therefore, I find that the "Technical Inspection and Certification" were received and used for export of goods and the rebate claim amounting to Rs.64265 /- is admissible on account of these input services.

iv) *FOB value of export clearance under the claim is as under:*

<i>Period of refund claim</i>	<i>Amount of FOB Value (in Rs.)</i>	<i>Amount of Refund/ Rebate (in Rs.)</i>	<i>Amount of refund claimed as %age of FOB Value</i>
<i>July 2017 to September 2017</i>	<i>1,10,53,14,191</i>	<i>1749237</i>	<i>0.16</i>
<i>October 2017 to November 2017</i>	<i>46,09,69,580</i>	<i>245445</i>	<i>0.053</i>
<i>Grand Total Rs.</i>		<i>1994682</i>	<i>0.213</i>

From the above, it may be seen that percentage of refund claim in respect of above claim is less than 0.50% of the declared F.O.B. value of exports as declared by the claimant. The refund claim documents are certified by the authorized signatory as required in terms of clause 3(h) of the said Notification to the effect that specified service. to which the documents pertain, has been received, the service tax thereon has been paid and the specified service has been used for the export of goods under the relevant shipping bill number. The input service documents submitted by the said claimant contains registration no. of service providers, category of service, invoice no. and date, address of the service provider and particulars of the service tax payable. The compliance of conditions that the said claimant has actually paid the service tax rests with the claimant only. As such, I find that the said claimant has taken the reasonable steps to ensure that appropriate service tax on input service has been paid by them.

v) *Further it is seen that the difference between the amount of rebate calculated as per scheduled rate (0.07%) and the amount of rebate claimed as per documents is more than 20% of the amount calculated as per scheduled rate. Thus the claimant is fulfilling the condition mentioned in Para No.1(c) of Notification No.41/2012-ST dated 29.6.2012.*

vi) *It is further seen that the question of unjust enrichment does not arise, since the rebate is granted to the exporter of goods by virtue of Notification No. 41/2012-ST dated*

29.06.2012, which is in the form of refund of Service Tax paid on specified input services which are received and used by the exporter in relation to the goods exported and has not received electronic rebate of Service Tax from Customs on the shipping bills on which rebate is claimed on the basis of procedure prescribed in paragraph 2 of the said Notification. The said claimant has submitted required declaration and undertaking mentioning that the claimant is not claiming CENVAT Credit of service tax paid on the specified services which are received and used for export of goods in question. The sale proceeds in respect of goods exported have been realized by the said claimant, as seen from the relevant copies of Bank Realization Certificates. Further the claimant is not a unit or developer of a Special Economic Zone. The said claimant has followed the procedure as well as fulfilled the conditions as laid down in Notification No. 41/2012-ST dated 29.06.2012, as amended, and as such the said claimant is eligible for the rebate provided by way of refund of service tax paid on the services i.e. "Technical Inspection and Certification which are used after clearance of goods from the place of manufacturer. Thus. I find that the claimant is eligible for refund of service tax of Rs. 1930237/- (1692887/- + 237350/-)/-. However. I find that the refund claim of Rs.64265/- is not admissible to the claimant for reasons as mentioned at para 3 of this Order.

vii) Details of admissible and inadmissible amounts in refund claim are as follows:

Services	Total Refund Amount Claimed (in Rs.)	Amount Inadmissible (in Rs.)	Amount Admissible (in Rs.)
"Technical Inspection and Certification	1994862/-	64625/-	1930237/-

viii) As per the observations made by the Audit, the assessee vide letter dated 24.12.18 clarified that:

- (i) The claims pertains to the period when GST was implemented but the services such as Technical Inspection & Certification services had been taken before the GST regime and these services were covered under Service Tax Act and they had paid the

service tax on the goods during the service tax regime. They have declared that they had not claimed the refund of service tax in the new regime.

(ii) The claimant has submitted that they have not credited the credit of trans-1 in GST regime. They are taking refund of goods which are exported and had suffered service tax on it.

(iii) As the credit of trans-1 is not credited as it was pre-gst matter and the same could not be debited in current gst portal. Hence it is not debited to GST portal.

ix) Thus, I find that

(a) the claim filed is complete in all respect

(b) that all documents requiring certification have been filed after due certification

(c) and claim is arithmetically accurate.

6. In view of the above findings, the assessee is eligible for refund of Rs. 19,30,237/- in respect of the above claim. Accordingly, I pass the following order."

4.3 For setting aside the order of original authority impugned order records as follows:

"8. I have gone through case records, grounds of appeal made by the appellant Department and oral and written submission made by the respondents. The issue to be determined is whether the Adjudicating Authority has rightly sanctioned refund to the respondents or the same was liable to be rejected as contended by the appellant Department. Section 142 of the CGST Act, 2017 explains Miscellaneous transitional provisions. The respondents have relied upon section 142(4) of CGST Act, which reads as under:

Section 142(4): Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

As per the submission of the respondents, as per the provision of Section 142(4) of CGST Act their claim is bona fide. However, Rule 3 of Point of Taxation Rules, 2011, interalia provides that the point of taxation shall be the time when the invoice for the service provided or agreed to be provided is issued. In this case the period of export pertains to October 2017 and November 2017 i.e after the introduction of GST. Therefore, the provision of time of supply of goods is applicable under Section 12 of CGST Act, 2017. Hence, the contention of the respondents cannot be accepted.

8.1. Similarly, under Section 16 of the IGST Act, GST is not applicable in India on exports. Accordingly, all export supplies of a taxpayer registered under GST would be classified as 'zero rated supply'. Sec. 54 of the CGST Act, 2017 contains provisions related to the refund of tax. As per Sec. 54(3) of the said Act, refund can be claimed at the end of any tax period in cases involving zero rated supplies made without payment of tax. Further Rule 89 of the CGST Rules, 2017 has been formulated to provide for the manner for claiming the refund. Clause (D) of Rule 8(4) of the CGST Rules, 2017 provides that turnover of zero rated supply of services is the aggregate payments received during the relevant period for zero rated supply of services subject to adjustments in respect of advances, if any, received relating to supply. Further, vide Circular No. 37/11/2018-GST dated the 15th March, 2018 on exports related refund issues, it was clarified as under:

8. Refund of transitional credit: Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund. under these scenarios is to be calculated using the formulae given in the said sub- rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is

claimed under sub rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'

9. Therefore, from the above, it appears that the respondents have filed refund claim under the repealed Notification and it can be construed that the refund sanctioning authority has erred in sanctioning the subject refund claim. Respondents have contended that Section 173 of the CGST Act, 2017, begins with the qualification "Save as otherwise provided under this Act,..." But I am constrained to note that there is no saving clause which would forestall repealing of the Notification No.41/2012-ST dated 29.06.2012."

4.4 Before we proceed further it is necessary to read the Notification in dispute. The text of the notification is reproduced below:

New Delhi, the 29th June, 2012

Notification No. 41/2012-Service Tax

G.S.R. ____ (E).- In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011 - Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid(hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely:-

Provided that-

- a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification, -

(A) "specified services" means-

(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (I) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944);

- b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;

- c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

- d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;

- e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone;

(2) the rebate shall be claimed in the following manner, namely:-

- (a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

- (b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;*
- (c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;*
- (d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that—*
 - (i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB) value of the said goods, on the basis of rate specified in the Schedule;*
 - (ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;*
 - (iii) conditions of the notification have been fulfilled;*
- (e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;*
- (f) amount so calculated as rebate shall be deposited in the bank account of the exporter;*
- (g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;*

(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

(3) the rebate shall be claimed in the following manner, namely:-

- a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;*
- b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;*
- c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;*
- d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;*
- e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;*
- f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;*

- g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.*

Explanation .- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962(52 of 1962);

- h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):*

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

- i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the*

Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) that the service tax rebate claim filed in Form A-1 is complete in every respect;

(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services;

(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2; and

(iv) that the rebate claimed is arithmetically accurate, refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;

(5) This notification shall come into effect on the 1st day of July, 2012.

4.5 From the perusal of the above reproduced notification it is evident that the notification is complete code in itself as it-

- creates the right to rebate of the service tax paid on the input services received by the exporter of the goods for use in the export of the goods;
- Provides for the manner in which the notification providing for the rebate of service tax paid on such input services shall be given effect to;
- Provides for the required safeguards and conditions in implementing the scheme as per notification;
- Provides for the period of limitation within which such refund claim needs to be filed;
- Provides for the manner in which rebate/ refund claim shall be processed by the jurisdictional officer and also the time period in which the claim has to be processed;
- Provides that no CENVAT Credit off the service tax paid on the input services has been taken.

However the notification do not provides for any limitation on the period in which the goods have to be exported from the date of receipt of the input service on the payment of service tax. Impugned order do not analyze the notification in dispute but have misdirected himself by going into the transitional provisions as per the Central Goods and Service Tax Act, 2017. From the plain wording of the notification it is evident that the right to claim the rebate has accrued to the appellant (exporter) on the date of payment of the service tax on input services received by him for use in the export of goods. Assistant Commissioner has in para 5 (iii) recorded a specific finding in this regard which was not disputed by the revenue in their appeal before the Commissioner (Appeal) nor Commissioner (Appeal) has recorded any finding to this effect.

4.6 In the case of Eicher Motors Ltd. [(1999) 2 SCC 361], Hon'ble Apex Court observed: -

"5. Rule 57-F(4-A) was introduced into the Rules pursuant to the Budget for 1995-96 providing for lapsing of credit lying unutilised on 16-3-1995 with a manufacturer of tractors falling under Heading No. 87.01 or motor vehicles falling under Headings Nos. 87.02 and 87.04 or chassis of such tractors or such motor vehicles under Heading No. 87.06. However, credit taken on inputs which were lying in the factory on 16-3-1995 either as parts or contained in finished products lying in stock on

16-3-1995 was allowed. Prior to the 1995-96 Budget, the Central excise/additional duty of customs paid on inputs was allowed as credit for payment of excise duty on the final products, in the manufacture of which such inputs were used. The condition required for the same was that the credit of duty paid on inputs could have been used for discharge of duty/liability only in respect of those final products in the manufacture of which such inputs were used.

As pointed out by us that when on the strength of the Rules available, certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the Scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that the right, which had accrued to a party such as the availability of a scheme, is affected and, in particular, it loses sight of the fact that the provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assesseees concerned. Therefore, the Scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier Scheme was applied under which the assesseees had availed of the credit facility for payment of taxes. It is on the basis of the earlier Scheme necessarily that the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said Rule would result in affecting the rights of the assesseees.

6. We may look at the matter from another angle. If on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the Rule cannot be applied to the goods manufactured

prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods."

4.7 In case of Dai Ichi Karkaria [1999 (112) E.L.T. 353 (S.C)] Hon'ble Supreme Court has category laid down as follows:

"17. *It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."*

4.8 Same view has been expressed as per the Section 173 and 174 (2) of the Central Goods and Service Tax Act, 1994 while repealing the Chapter V of The Finance Act, 1994. The said provisions are reproduced below:

Section 173. Amendment of Act 32 of 1994.-

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

Section 174. Repeal and saving.-

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act" , as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

(a); or

(b); or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided; or

(d); or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings

4.8 The observation made by the Commissioner (Appeal) in respect of the provisions of Section 173 of The Central Goods and Service Tax Act, 2017, are in respect of the repeal of notification 41/2012-ST without even referring to the Section 174 (2) *ibid*, cannot impact the rights accrued to the appellant prior to such repeal. As is evident from the wording of the notification and the decision of the Hon'ble Supreme Court the right to rebate has accrued to the appellant at the time of the receipt of the specified input services for use in the export of goods by the exporter, and such right could not have been extinguished by the subsequent event of repeal of Chapter V of the Finance Act, 1994. Interpreting the section 174 of the Central Goods and Service tax Act, 2014, Hon'ble Jharkhand

High Court has in the case of Rungta Mines Limited [Order dated 15.02.2022 in Writ Petition (T) No 2245/2020] observed as follows:

46. Section 174 of the CGST Act read with section 6 of the General Clauses Act saves the right acquired, accrued or vested under the existing law and does not create any new right which never existed on the appointed day i.e on 01.07.2017 under the existing law."

4.9 I am not inclined to pronounce upon the applicability of the decisions referred to by the counsel for the appellant during the course of arguments which may or may not be applicable to facts of the present case. However in view of the decisions referred above I am unable to sustain the impugned order.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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