CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85444 of 2020

(Arising out of Order-in-Appeal No. PUN-CT-APP II-000/076/19-20 dated 24.10.2019 passed by the Commissioner (Appeals-II), Central Tax, Pune)

Cummins Technologies India Pvt. Ltd. .... Appellant
India Technical Centre, Finance Department,
8th Floor, Tower B, Cummins India Office Campus,
Balewadi, Pune – 411001

Versus

Commissioner of Central Tax, Pune-II .... Respondent
GST Bhavan, 41/A Sassoon Road
Pune – 411 001.

Appearance:

Shri Ranjeet Mahtani, Advocate for the Appellant

Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85532/2024

Date of Hearing: 31.01.2024

Date of Decision: 31.01.2024

Per: M.M. Parthiban

This appeal has been filed by the appellant M/s Cummins Technologies India Private Limited, Pune (herein after referred to as "the appellant") assailing the Order-in-Appeal No. PUN-CT-APP II-000/076/19-20 dated 24.10.2019 (hereinafter referred to as "the impugned order") passed by the Commissioner (Appeals-II), Central Tax, Pune.

2. Brief facts of the case are that the appellant is engaged export of services and is registered with the jurisdictional Service Tax Commissionerate. In respect of input Cenvat credit accumulated on account of output services being exported, the appellant has filed a

refund claim of Rs.66,83,872/- for the period April, 2015 to June, 2015, under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27.2012-C.E. (N.T.) dated 18.06.2012. On scrutiny of the said refund claim, the original authority had sanctioned an amount of Rs.32,38,600/- as eligible refund and had rejected the claim of the appellant for Rs.34,45,272/-, by issue of an Order-in-Original dated 30.11.2016. In rejection of the said claim, the original authority had mentioned the main grounds for rejection as (i) the address mentioned in some of the invoices was different from the address registered in their ST-2 certificate and a copy of one of the invoice was not produced before the original authority, and (ii) invoices were issued in the name of their own unit situated at Balewadi, Kalyani Nagar address and not in the name of the registered address. Being aggrieved with the original authority's order dated 30.11.2016, the appellant had filed an appeal before the learned Commissioner (Appeals-II), who after examining the factual matrix of the case had rejected the appeal filed by the appellant on the ground of time limit without examining the merits of the case. Feeling aggrieved with the impugned order of the learned Commissioner (Appeals-II) dated 24.10.2019, the appellant has filed this appeal before the Tribunal.

3.1 From the facts of the case, I find that in respect of the appeal filed before the learned Commissioner (Appeals-II), there is a dispute in respect of the receipt of appeal petition against the original order submitted in the prescribed format 'Form ST-4' within the prescribed time for filing the appeal under the Finance Act, 1994. It has been claimed by the appellant that Order-in-Original dated 30.11.2016 was received by them on 14.12.2016 and they had filed the appeal before the learned Commissioner (Appeals-II), through the Service Tax Sevottam Cell on 10.02.2017 and obtained an acknowledgement having the seal of the office with date stamped as "10 FEB 2017" along with Serial No.1605 written in hand. As there was no response to their appeal, the appellant had submitted a letter dated 29.04.2019 directly to the learned Commissioner (Appeals-II), seeking personal hearing before the said authority. Further, pursuant to the personal hearing given to the appellant on 03.10.2019, by the learned Commissioner (Appeals-II), the appellant submitted letter dated

22.10.2019 producing the original copy of their appeal papers kept with them along with the acknowledgement provided therein for receipt of the same at the Sevottam Cell of Pune Central Tax Commissionerate.

3.2 Further, I find that learned Commissioner (Appeals-II), had examined the matter and had concluded about the timely submission of appeal papers before him in the following manner. The relevant extract of the same in the impugned order is reproduced below:

> *"9.To know the facts of the case, this office vide letter dated 31.05.2019 requested the concerned departmental officer to confirm whether such appeal as claimed by the Appellant is registered at Service Tax Sevottam Cell or otherwise. The Assistant Commissioner, Sevottam Cell, GST-II Commissionerate, vide his letter dated 03.05.2019, replied as under:*
>
> > *'It is to confirm that the said letter dated 09th February 2017 of M/s Cummins Technologies India Private Ltd. has not been received by Service Tax Sevottam Cell. As per the register, the registered Sr. No. 1605 dated 10.02.2017 is allotted to Sanjay Shivaji Mohankar which is pertaining to Superintendent (Registration)."*
>
> *xx xx xx xx xx*
>
> *In view of the foregoing, it cannot be said that the appellant has filed an appeal with the department on 10.02.2017. Therefore, the claim of the Appellant that they have filed an appeal on 10.02.2017 cannot be accepted. This office came to know about the said issue for the first time vide their letter dated 29.04.2019 enclosing therein the copy of the appeal memorandum. Thus, the appellant cannot contend the appeal was filed before the wrong forum and that would save limitation. It is an admitted fact that there was a delay of almost two and half years in seeking appellate body before the Commissioner (Appeals) in terms of Section 85(3A) of the Finance Act, 1994.*
>
> *xx xx xx xx xx*
>
> *13. This office, being creature of the statute cannot travel beyond the jurisdiction of the statute, and cannot condone the delay beyond the time limit prescribed for filing of appeal under any circumstances. Therefore, without going into the merits of the case, I find that this appeal is liable for rejection on account of delay in filing the present appeal in terms of Section 85 (3A) of the Act as applicable to Service Tax matters, which I hold so.*
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> *14. In view of the above discussion, I pass the following order:*
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> *<u>ORDER</u>*
>
> *I reject the Appeal No. 35/2019-20 filed by the Appellant on limitation, in terms of Section 85(3A) of the Finance Act, 1994."*

3.3 Plain reading of the above paragraphs, which provide the conclusion and order passed by the learned Commissioner (Appeals-

II), indicate that in respect of filing an appeal before the Commissioner (Appeals) in terms of Section 85 (3A) of the Finance Act, 1994, he had relied upon the time limit prescribed under the legal provisions which have been computed from the date of receipt of the letter of the appellant in his office on 29.10.2019 and thus concluded that there was a delay of about two and half years in filing the appeal before him.

4.1 On the basis of the above, I find that the short issue for consideration before me is to be decide whether there is any delay in filing of appeal before the Commissioner (Appeals-II) in terms of the provisions under Section 85 (3A) of the Finance Act, 1994 or not? Hence, I would like to first refer to the relevant legal provisions contained in the Finance Act, 1994.

<u>Extract of Finance Act, 1994</u>

> ***"Appeals to the Commissioner of Central Excise (Appeals).***
>
> ***Section 85.*** *(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).*
>
> *(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*
>
> *xx xx xx xx*
>
> *(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:*
>
> ***Provided*** *that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."*

4.2 On careful perusal of the facts of the case, I find that the function of the Sevottam cell in receipt of the appeal paper, claimed to have been filed by the appellant on 10.02.2017 and the legal requirement under 85 (3A) ibid, are required to be examined to arrive at the conclusion on the issue for decision placed before me.

4.3 I find that the word "Sevottam" is a combination of two Hindi words: Seva (Service) and Uttam (Excellent). It means "Service Excellence", emphasizing the idea of "Service". It symbolizes the change in mindset within the Government, from administration and control to service and enablement. The overarching objective of Sevottam is to continuously improve the quality of public service delivery in the country. Sevottam framework was created by the Department of Administrative Reforms and Public Grievances, Government of India in 2005, after study of the best international practices such as the Charter Mark of United Kingdom and the Malcolm model of United States of America. It is a framework for bringing continuous improvements in service delivery by government organizations. Thus, I find that Sevottam is an administrative measure to improve the quality of public services in India.

4.4 Central Board of Indirect Taxes & Customs (CBIC) with its large number of field offices is one of the organization which has a large public interface and therefore, it had been selected for implementation of Sevottam for achieving excellence in service delivery. The Customs and Central Excise department (as a service provider) interacts with the large number of clients such as Importers/exporters/ manufacturers/service providers/international passengers/ passengers getting goods by post, courier or unaccompanied baggage. Within the CBIC, the Directorate General of Inspection (Customs and Central Excise) had been designated as the nodal agency for implementation of Sevottam in the department and it had established certain systems and procedures for Sevottam. One of the standards set by the CBIC under this public delivery of service is to *acknowledge all written communications including declarations, intimations, applications and returns immediately and in no case later than specified (7 days) working days of their receipt*.

4.5 Further, the sworn affidavit dated 17.02.2020 of Shri Amit Ramesh Dighe, Office Assistant working with the appellant had stated that he had submitted appeal documents on 10.02.2017 to Excise and Service Tax Office at ICE House, Sassoon Road, Pune and had obtained an acknowledgement by way of a rubber stamp with an inward entry No. 1605, on their copy. On the other hand, the sworn affidavit dated 12.01.2023 filed by the Assistant Commissioner, Division-V, Pune-II CGST Commissionerate, after lot of persuasion by the Tribunal and the office of AR, indicate that there is single inward and outward section handling receipt and dispatch of tapals (correspondences) from both the Trade and the intra-departmental communication. As per the practice followed, it states that an appeal presented for filing is first checked by the departmental officers at the receipt section for its completeness. Once checked, the particulars of the appellant are entered in the relevant Appeal Register with running serial number along with date financial year-wise. The said running serial number is the Appeal Number which along with date and office inward stamp are also given on the acknowledgement copy of the appellant. All further correspondences with the appellant is made with reference to this Appeal Number. Further, this affidavit also states that the appeal paper before the Commissioner (Appeals-II) was not filed in the office of the Commissioner CGST Appeals-II Commissionerate on 10.02.2017. The above position has also been reaffirmed in the letter dated 19.12.2022 written by the Commissioner, CGST Appeals-II, Pune addressed to the Additional Commissioner of Chief Commissioner's Unit at Pune.

4.6 I had examined the above affidavits filed by both the parties and the extract of the "Central Inward & Acknowledgement Register (SQM 3.2.1.1.). As the above two affidavits filed by both sides are supportive to each other's stand, I could only conclude from the above that there is a system of receiving all the letters, returns, appeal papers etc. in terms of the Standard Quantity Manual that all written communications submitted by a sender before the Sevottam section would be acknowledged by the department. It is not the case of the department, that the appellant had fabricated the seal of the office of the Commissionerate to be affixed in their copy of the appeal, without filing the appeal papers before the Sevottam section. I would rather find that any tax payer regularly filing various declarations, returns would also file the refund claim with the departmental authorities properly, and he would not avoid filing the appeal paper that too for claiming refund of Cenvat credit which was rejected by the original authority, as it does not help his case. The remote possibility could be that such appeal papers prepared by the appellant, were forgotten to be filed with the department or were lost in transit. On the other hand, it is also possible that after filing of such appeal papers at the Sevottam section, these were lost in transit before it could be handed over to the respective section. However, in the absence any factual evidence, I could not subscribe to any of these possibilities. For the same reason, I donot depend on both the affidavits as they do not throw complete detail or factual position. Even the Register maintained by the Sevottam section does not provide complete details, to indicate that the action of recording the Acknowledgement No. and Receipt stamp on each paper/ document received by the Sevottam action being instantly recorded.

4.7 On the basis of the above discussion, I am of the considered view that without finding the factual position about what happened to the appeal papers filed by the appellant before the Sevottam section on 10.02.2017, when there is a specific seal of the office of jurisdictional CGST Commissionerate; and whether the appellant did not file the appeal papers at all originally on 10.02.2017, it is not appropriate to come to the conclusion that the appellant had for the first time filed the appeal before the Commissioner (Appeals-II) by submitting their letter dated 29.04.2019 directly before his office. This is more so when CBIC had prescribed Sevottam public delivery service of receiving all documents, papers, returns, forms etc. by a central section of the office and various Commissionerates have taken up this as standard procedure in their dealing with the trade and public. In fact, this reinforces that the system of individual section or office accepting the documents and giving acknowledgement is not available to the trade and public. I am also aware that the present system of such Central Receipt section within CBIC has improved now a day to a greater extent that each of the document received is scanned and all official transactions are handled in electronic office system, indicating that all such receipts are scanned and kept for record in electronic file leaving very little chance for missing of any physical copy of the papers.

4.8 I further find that the learned Commissioner (Appeals) in the impugned order has not examined the merits of the case and disposed of the appeal only on the ground that the appellant failed to submit the appeal memorandum within the prescribed period under Section 85(3A) ibid. From the records of the case, by taking the documents on face value as it is, since these have not been proved otherwise, and without taking into account the affidavits filed by both sides, I find that if the receipt of appeal memorandum submitted on

10.02.2017 having acknowledgement of seal of the Commissionerate is taken into account, then from the date of receipt of the Order-in-Original by the appellant on 14.12.2016, within two months of the receipt of the original order they had preferred the appeal before the office of the Commissioner (Appeals-II), through the Service Tax Sevottam Cell. I further find that the appellant had fulfilled the requirement of submitting appeal memorandum by submitting the papers in terms of Section 85(3A) ibid; however, it could be that subsequently these appeal papers have not reached the office of the Commissioner (Appeals-II). However, if it is treated that the appellant had filed the appeal memorandum for the first time before the Commissioner (Appeals), then the delay in filing such appeal need to examined for consideration of condonation of delay in such belated filing. Further, there are sufficient grounds on the merits of the case as submitted by the appellant in the appeal before this Tribunal, which needs to be examined in order to decide the issue in terms of legal provisions of the Finance Act, 1994 and the rules and regulations made thereunder and notifications issued thereunder. The appellant have also relied upon various case laws that have decided the issue of eligibility of refund in respect of dispute relating to the documents such as address mentioned in some of the invoices being different from the address registered in their ST-2 certificate; invoice not submitted before the original authority for verification; invoices having been issued in the name of the appellant's own unit and the address mentioned in the invoices is not in the name of the registered address etc.

5. In view of the above, I find that the ends of justice would be met if the delay in filing the appeal by the appellant before the Commissioner (Appeals-II) is condoned in the above factual matrix of the case and the same is remanded to the said authority. Further, it would provide a reasonable opportunity for examination of the entire issues in detail on merits, on the basis of grounds submitted by the appellant in these appeals and also on the basis of other grounds to be submitted before the first appellate authority. Needless to say that adequate opportunity for personal hearing should be given to the appellant to explain their case and also to take into account the various documents relied upon by them before deciding the case.

6. In the result, the impugned order dated 24.10.2019 is set aside and appeal is allowed by condoning the delay in filing the appeal before the Commissioner (Appeals) and remanding the case back to the Commissioner (Appeals-II) i.e., the First Appellate Authority for passing *de novo* order on merits of the case.

(Operative portion of the order pronounced in open court)

(M.M. Parthiban)
Member (Technical)

Sinha