CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH, MUMBAI

EXCISE APPEAL NO. 85332 OF 2020

(Arising out of Order-in- Appeal No. PVNS/158/RGD/APP/2019-20 dated 13.11.2019 passed by the Commissioner (A), Central Tax, Central Excise & Service Tax, Raigad.)

SI Group India P Ltd,
Plot No. D-2/1, TCT Industrial Area,
Opp. Juniagar Railway Station,
Thane-Belapur Road,
Navi Mumbai-400 705.

........Appellant

VERSUS

The Commissioner CGST And Central Excise- Belapur
5th Floor, CGO Complex, 10,
CBD Belapur, Navi Mumai-400614.

........Respondent

APPERANCE:

Shri Aditya Srinivasan, C.A. for the Appellant

Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86103/2024

Date of Hearing: 12.08.2024
Date of Decision: 07.10.2024

Denial of cash refund of Rs. 30,38,426/- as accumulated cenvat credit, paid post introduction of GST, towards Service Tax on Reverse Charge Mechanism for the period from April 2016 to June 2017, on the basis of audit objection raised in EA 2000 audit by the Refund Sanctioning Authority through an adjudication order consequent upon service of show cause notice that received affirmation of the Commissioner (Appeals), is assailed by the assesse appellant in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is engaged in the manufacture of certain chemicals and its allied additives used for manufacture of leather articles in its factory at Pune. During the F.Y. 2018-19, Respondent Department conducted internal audit for the above referred period and

observed that certain Service Taxes were payable on Reverse Charge Mechanism against import of services, GTA services and legal services etc. Appellant paid it algongwith interest in June, 2018 but by that time CGST Act has already come into force, having transition provision made available upto the end of 2017. Since, transition of Tax input was no more available, Appellant sought for refund of the said cenvat credit in cash by invoking section 142(3) of the CGST Act, 2017. Show cause notice dated 17-01-2019 was issued to it by the Respondent proposing rejection of the said refund under provision of section 142(8) (a) of the CGST Act, 2017 and adjudication process continued thereafter. Appellant lost its claim both in Order-in-Original and Order-in-Appeal passed by the Adjudicating Authority and Commissioner (Appeals) and is presently before this forum seeking necessary relief.

3. During course of hearing of the appeal, learned counsel for the Appellant Mr. Aditya Srinivasan, submitted that this Tribunal had in number of occasions starting from M/s. Brose India Automotives Systems Private Limited V/s. Commissioner of CGST, 2019 till the final order passed in another case of M/s. Brose India Automotives Systems Private Limited on 22-01-2024 as well as Larger Bench constituted on the issue that delivered its finding on 21-12-2023 in the same case M/s. Brose India Automotives Systems Private Limited for a different period, had categorically held that such payment of service tax towards input services made under Reverse Charge Mechanism after implementation of CGST Act on 01.07.2017 is refundable by cash as per section 142(3) read with section 174(2)(f) of the said Act and CESTAT is competent to pass such an order. He, therefore, prayed to allow the appeal by way of setting aside the order passed by Commissioner (Appeals).

4. *Per contra*, Authorised Representative for the respondent department Shri P.K. Acharya, Superintendent, submitted with reference to the judgment passed by Hon'ble Jharkhand High Court and By Hon'ble Madras High Court in the case of *M/s. Rungta Mines Limited V/s. Commissioner of CGST, Service Tax & Central Excise, Jharkhand, reported in 2022 (22) TMI 934 and Ganges International Pvt. Ltd & Others V/s. Asstt. Commissioner of GST & Commissioner C.Ex. Punducherry, reported in W.P.No. 528 of 2019* respectively, had observed that in the absence of specific statutory provision such refund is not admissible for which order passed by the Commissioner (Appeals) need not be interfered with.

5. I have been gone through the case record and relied upon judgments. While accepting contention of the learned counsel for the Appellant that refund of such Cenvat Credit under section 142(3) in cash is admissible, as for the Judicial President of this Tribunal including that of the Larger Bench constituted on the issue in case of M/s. Brose India Automotives Systems Private Limited cited supra, there is no express contrary finding available in those two judgments referred by learned authorised representatives for the Department as in both the cases, the findings were to the effect that express provision though was not available in the existing Act (Now erstwhile Excise Act and Cenvat Credit Rules, 2004) for cash refund, Assessee is eligible to take cenvat credit amount so paid under the Service Tax Rules and even in the Ganges International Pvt. Ltd judgments cited supra, it was also directed that such provision as available under section 142(3) could be treated as a dire necessity and by invoking "Doctrine of Necessity" relief can be granted to the Appellant in such kind of quasi-judicial/administrative matter.

6. It would be, worthwhile, also to make a reference to section 142(6) of the CGST Act of 2017 that has commanded this Tribunal to dispose of claim

of Cenvat Credit in accordance with provision of the Pre-existing law and any credit found to be admissible to the claimant should be refunded to him in cash not notwithstanding anything to the contrary is contained under the provision of the pre-existing law … .

(Underlined to emphasise).

7. Similar provision including *non-abstanate* clause like "notwithstanding contrary available in the existing law" namely Excise and Service Tax Laws is available to grant cash relief under section 142(3) of the CGST Act. I am therefore, of the considered view that in the existing (now-pre-existing) law, whether refund in cash provision is available or not, this non-abstanate clause permitted refund admissible to the assesse in respect of Cenvat Credit only through payment of cash after expiry of transitional provision. Appellant is therefore, entitled to get the refund in cash as claimed with applicable interest as per law.

The order

8. The Appeal is allowed and the order passed by the Commissioner (Appeals), Central Tax, Central Excise & Service Tax, Raigad, *vide order in Appeal No. PVNS/158/RGD/APP/2019-20 dated 13.11.2019,* is hereby set aside. Respondent Department is directed to pay Rs. 30,38,426/- with applicable interest as per law to the Appellant in cash within a period of two months from the date of receipt of this order.

(Order pronounced in the open court on 07.10.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Arti