CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86334 of 2020

[Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0143/2020-21 dated 24.09.2020 passed by the Commissioner of Central Tax, (Appeals-I), Pune.]

Avaya India Private Limited **.... Appellants**
Wing A & B, Level 3, 4 & 5, Tower-11
Cybercity, Magarpatta City,
Hadapsar, Pune – 411 013.

VERSUS

Commissioner of Central GST **..... Respondent**
Pune-I CGST Commissionerate,
GST Bhavan, ICE House, 41-A, Sasson Road
Opp. Wadia College, Pune – 411 001.

APPEARANCE:

Shri Harish Bindumadhavan a/w Ms. Renuka Sable, Advocates for the Appellants

Shri C.S. Pavan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86825/2025

Date of Hearing: 25.07.2025
Date of Decision: 19.11.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Avaya India Private Limited, Pune (herein referred to as 'the appellants', for short) against the Order-in-Appeal No. PUN-EXCUS-001-APP-0143/2020-21 dated 24.09.2020 (referred to, as 'the impugned order', for short) passed by the Commissioner of Central Tax, (Appeals-I), Pune.

2.1 Brief facts of the case, leading to this appeal, are summarised herein below. The appellants herein, *inter alia,* are engaged in the business of providing taxable services of 'Research and Development of Telecommunication Software service' and for compliance with the Service Tax statute, they are registered with the jurisdictional Commissionerate

under Service Tax Registration No. AAECA3592NST001. Since the appellants have been receiving 'technology support service' from their group company M/s Avaya International Sales Limited, Ireland, they had paid applicable service tax on Reverse Charge Mechanism (RCM) basis by treating the same as import of service on 05.05.2017 and disclosed such particulars in their periodical service tax return filed with the jurisdictional service tax authorities. Further, as these services qualify as input service in terms of CENVAT Credit Rules, 2004, the appellants also took CENVAT credit of such service tax paid on RCM basis. Subsequently, at the time of finalization of annual accounts for the year ending 31.03.2017, the appellants have found that as per transfer pricing regulations, the amount of such technology support services received from their group company abroad was under reported to the extent of Rs.20,69,44,130/- and thus they paid the applicable service tax of Rs.2,89,72,178/- under RCM basis through GAR Challan dated 16.02.2018. Since, the said amount of service tax paid could not be transitioned into GST regime as input credit through TRAN-1 form procedure, the appellants had submitted refund claim of such amount along with supporting documents under Section 11B of the Central Excise Act, 1944, as made applicable to service tax matters vide Section 83 of the Finance Act, 1994 read with transitional provisions under Section 142(3) of the CGST Act, 2017, before the jurisdictional Assistant Commissioner (AC), Division-VI, CGST Pune-II Commissionerate on 14.02.2019.

2.2 On receipt of the refund claim of the service tax as above, the jurisdictional AC had issued Show Cause Notice dated 22.03.2019 for denial of such refund and also indicated three dates for appearance before him for personal hearing in this case. In adjudication of the SCN dated 22.03.2019, the original authority after examining the facts of the case and after verification of the documents submitted by the appellants, had rejected the refund claim on the ground that the same is not is admissible under the provisions of Central Excise statute vide Order-in-Original No. R/44/ Koregaon Park/GST/19-20 dated 23.09.2019. Being aggrieved with the above order, the appellants had filed an appeal before the Commissioner of Central Tax (Appeals-I), Pune. In disposal of the above appeal, the learned Commissioner (Appeals) has held in the impugned order dated 24.09.2020, that the appellants are not eligible for refund of excess CENVAT credit of service tax paid under Section 142(3) of the CGST Act, 2017 on the ground that the same is not found to be in accordance with the provisions of the

existing law. Feeling aggrieved with the above impugned order, the appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants at the outset, had submitted that the issue of whether this Tribunal has jurisdiction to hear matters pertaining to Section 142(3) of the CGST Act has been settled by the Larger Bench in the case of *Bosch Electrical Drive India Pot. Ltd.* [2023 (12) TMI 1145 - CESTAT Chennai - LB]. Hence, there is no bar for deciding the issue covered in this appeal by the Tribunal.

3.2 Learned Advocate submitted that in the present case, the refund is in respect of service tax paid by them on RCM basis and in terms of Section 83 of the Finance Act, 1994. Since, the provisions of Section 11B of the Central Excise Act, 1944 has been made applicable on matters of service tax and thus there can be no dispute on the fact that the refund claim filed by them is covered by Section 11B ibid. Further, he stated that clause (d) of the proviso to Section 11B(2) ibid provides for refund to be paid in cash to the assessee, where the incidence thereof is proved to have not passed on. He further submitted, that there is no dispute on the fact that the incidence of duty is not passed on to any other person since the same has been paid by them on RCM basis, and that they had submitted a certificate of the Chartered Accountant about not carrying forward as transitional credit at the time of filing the refund claim. Hence, he submitted that their case is squarely covered by clause (d) of Section 11B ibid.

3.3 In addition to the above, learned Advocate submitted that the issue under dispute is settled in favour of the appellants, in a number of cases decided by the Tribunal and upheld by the Hon'ble High Court of Bombay. He relied upon the following case laws:

(i) *Lupin Limited Vs. Commissioner of GST & Central Tax, Aurangabad* – (2025) 26 Centax 192 (Tri.-Bom.)

(ii) *GE Power Systems India Private Limited Vs. Commissioner of Service Tax, Ahmedabad* – (2024) 25 Centax 355 (Tri.-Ahmd.)

(iii) *Reliance Life Science Private Limited Vs. Commissioner of Central Tax & Central Excise, Belapur – Final Order No. A/85871/2024 dated 09.09.2024.*

(iv) *NSSL Private Limited Vs. Commissioner of CGST & Central Excise, Nagpur-I* – Final Order No.A/86639-86640/2021 dated 03.08.2021.

(v) *Combitic Global Caplet Private Limited Vs. Union of India* – (2024) 20 Centax 144 (Bom.)

Thus, he claimed that the appellants are eligible for refund and prayed that their appeals be allowed.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner (Appeals-I) in the impugned order and submitted that in view of the specific provisions for refund of CENVAT credit not being provided under Section 11B ibid, the same is not permissible. In this regard, he relied upon the order of the Hon'ble High Court of Bombay in the case of *Gauri Plasticulture P. Ltd., Vs. Commissioner of Central Excise, Indore* – 2019 (30) G.S.T.L. 224 (Bom.). Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by both sides.

6. The short issue for determination before the Tribunal is whether refund of input credit/CENVAT credit of the amount of service tax paid on RCM basis is permissible under Section 142(3) of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944?

7. When the matter had come up for hearing before this Bench on 25.07.2025, upon considering the fact that the disputed issue herein has already been addressed in detail by this Tribunal in a number of cases and that the Hon'ble High Court of Bombay in the case of *Combitic Global Caplet Private Limited* (supra) had also delivered the judgement in favour of the appellant, the learned AR was asked to specifically find out whether the Final Orders of the Tribunal dated 03.08.2021 and 09.09.2024 passed by this Bench of the Tribunal, in the case of *NSSL Private Limited (supra) and Lupin Limited (supra)* have been appealed against or have been accepted by the department.

8. In response to the above, learned AR in his written submission vide letter dated 11.09.2025 had ascertained the fact that the jurisdictional Commissioners in both the cases of *NSSL Private Limited (supra) and Lupin Limited (supra)* have informed vide reply letter dated 10.09.2025 and reply e-mail dated 25.08.2025, that the Orders passed by the Tribunal in the above referred cases have been accepted by the department and have not been appealed against before the higher appellate forum.

9.1 We also find that the identical issue has been addressed in the Order of the Tribunal in the case of *NSSL Private Limited (supra)* and the appeal was allowed in favour of the appellant therein. The relevant paragraphs of the said order are extracted and given below:

> *"3…..Insofar as the statutory provisions are concerned, it has been mandated that the assessed/adjudged amount of tax/interest/fine/ penalty shall be recovered from the assessee as an arrear of tax under the CGST Act, 2017. In the case in hand, the appellant is not falling under the scope and ambit of sub-section 8(a) of Section 142 (supra) inasmuch as no assessment/adjudication orders were passed by the competent authorities in determining the tax liability, which the appellant was required to pay under the erstwhile statute; rather, the case of the appellant is governed under the provisions of sub-section (3) of Section 142 ibid. The relevant statutory provision is extracted herein below :-*
>
> > ***"142. Miscellaneous transitional provisions -***
> > *(3) every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944)*
> >
> > *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."*
>
> *4. On reading of the above statutory provision, it transpires that an assessee can file the application, claiming refund of the amount of Cenvat credit after the appointed day and that the said application shall be disposed of by the authorities in accordance with the erstwhile statute. The authorities below have not questioned the issue regarding the entitlement of the appellant to the Cenvat credit under the erstwhile Cenvat statute. On careful examination of the statutory provisions, I am of the considered opinion that the refund claims filed by the appellants should merit consideration under the provisions of sub-section (3) of Section 142 ibid, and as such, it should be entitled for the benefit of refund of service tax paid by it".*

9.2 Further, we also find that in the order passed of the Tribunal in the case of *Lupin Limited (supra),* the judgement of the Hon'ble Bombay High Court in *Gauri Plasticulture (supra),* was properly analysed and distinguished in the context in which that judgement was delivered for denial of refund of unutilised CENVAT credit.

9.3. We further find that Hon'ble Bombay High Court had an occasion to examine an identical issue to the present issue in dispute, in a similar matter before them, in the case of *Combitic Global Caplet Pvt. Ltd. (supra).* In the judgement delivered on 10.06.2024, the Hon'ble Bombay High Court have held that Sub-section (3) of Section 142 of the CGST Act, 2017 very clearly says that any amount eventually accruing shall be paid in cash and directed the departmental authorities/sanctioning authority for refunding the amount of duty refundable to the petitioner in cash instead of credit in CENVAT account. The relevant paragraphs of the said judgement of the Hon'ble Bombay High Court are extracted and given below:

> *"11. In our view, Section 142(3) of the Act is very clear in as much as, it says " every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law …….. and any amount eventually accruing …….. shall be paid in cash ……". It is very widely worded in as much as it uses the expression "CENVAT credit" and also "any other amount paid". Even if, we take it that petitioner has made voluntary deposit, that amount has to be shown as CENVAT credit in the account of petitioner. In the alternative, it would certainly come under the category "or any other amount paid". Therefore, either way the amount paid by petitioner, admittedly, has to be refunded. In fact, it is also admitted that an amount of Rs.10,48,11,737/- is refundable to petitioner.*
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> *The credit of refund is the only issue because Mr. Adik, as an officer of this court and in fairness, agreed that Government cannot retain any amount without any authority of law.*
>
> *12. Sub-Section (3) of Section 142 of the Act very clearly says "any amount eventually accruing shall be paid in cash". In the circumstances, we are of the opinion that respondents ought to have directed the sanctioning authority to refund the amount of duty refundable to petitioner in cash instead of credit in CENVAT account, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.*
>
> *13. Therefore, Rule made absolute in terms of prayer clauses (a) and (b) of both petitions, which are quoted above.*
>
> *14. The amount shall be paid together with accumulated interest in accordance with law within four weeks of this order being uploaded."*

10. In view of the foregoing discussions and analysis, we find that the issue under dispute is no more *res integra*. Therefore, in our considered view, there are no merits in the impugned order passed by the learned Commissioner (Appeals-I), Pune and the same is liable to be set aside. Thus, the impugned order dated 24.09.2020 is set aside, as it does not stand the scrutiny of law.

11. In the result, the impugned order dated 24.09.2020 is set aside and the appeal is allowed in favour of the appellants, with consequential relief, as per law.

(Order pronounced in the open court on 19.11.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha