CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

SERVICE TAX APPEAL NO. 87654 OF 2016

(Arising out of Order-in-Appeal No.PUN-SVTAX-000-APP-230-16-17 dated 12.09.2016 passed by the Commissioner of Service Tax (Appeals), Pune.)

M/s. HARBINGER SYSTEMS PVT LTD
139, SIDDHANT SURVEY NO. 97/6,
BHUSARI COLONY PAUD ROAD,
EX-SERVICE MAN COLONY,
PUNE-411 038. ....Appellant

VERSUS

COMMISSIONER CENTRAL EXCISE AND SERVICE TAX-PUNE-II ....Respondent
1st FLOOR, GST BHAVAN, 41/A SASSOON ROAD,
OPP. WADIA COLLEGE, PUNE-411 001.

APPERANCE:

Shri Vikas Khare, C.S. for the Appellant
Shri Dhananjay Dahiwale, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85392/2026

Date of Hearing: 06.01.2026
Date of Decision: 23.02.2026

In this second round of litigation, denial of refund of unutilized Cenvat credit of Rs. 10,87,454/- availed on the basis of service tax paid under Voluntary Compliance Encouragement Scheme, 2013 (VCES) by the Commissioner (Appeals) to the appellant exporter who sought for refund of unutilized Cenvat Credit of Rs. 38,92,623/- in the first round of litigation and accepted grant of refund to the tune of Rs. 34,17,963/- is assailed before this Tribunal.

2. Fact of the case, in a nutshell, is that appellant has been engaged in providing services concerning Information Technology Software taxable under section 65 (105) (zzzze) of the Finance Act, 1994 to its clients outside India and those services were exported under Rule 6A of the Service Tax Rules 1994 entitling it to avail Cenvat Credit under Cenvat Credit Rules 2004 (CCR) and get refund of un-utilised credit as per Rule-5 of Cenvat Credit Rules 2004 (CCR) for the period from July to September 2014. Appellant sought for refund of Cenvat Credit of Rs. 38,92,623/- through refund application dated 24.06.2015 which was allowed to the extent of Rs. 34,17,963/- vide Order-in-Original dated 04.01.2016 and it had not disputed rejection component of Rs. 4,74,660/- but in an appeal preferred by the Respondent Department before the Commissioner (Appeals), Cenvat Credit of Rs. 10,87,454/- availed by the appellant was denied to be refunded as the Service Tax was paid under VCES Scheme which is hit by Section 109 of the Amended Finance Act, 2013. Legality of the said order passed by the Commissioner (Appeals) is assailed before this forum.

3. During course of hearing of appeal, ld. Counsel for the appellant Mr. Vikash Khare, submitted that under Section 107 of the said VCES Scheme, declaration concerning payment of tax dues was prescribed and Section 109 of the Finance Act, 1994 clearly stipulates that any amount paid in pursuance of declaration made under Section 107 sub-section(1) shall not be refundable under any circumstances' but in the instant case appellant has not sought for refund of service tax paid to the Respondent under the VCES Scheme but it has sought for refund of the eligible Cenvat Credit that was taken upon payment of such service tax, which it could not utilise otherwise towards adjustment of duties as being exporter, it was not paying the duties on exports and CBEC, the Nodal Agency of the Respondent, had

clarified in its circular No. 170/5-2013-ST issued on dated 08.08.2013 through FAQs issued by it under question No. 22 to the effect that all issues relating to Cenvat Credit had to be determined in terms of provisions of the Cenvat Credit Rules except that Rule-6(2) of the VCES Rules 2013 prescribed that Cenvat Credit cannot be utilized for payment of tax dues under the scheme, which would mean that tax dues which are declared under the VCES Scheme has to be paid in cash and not through utilization/adjustment of Cenvat Credit but there is a clear noting in the answer to the said Question NO. 22 that admissibility of the Cenvat Credit and eligibility have to be dealt under Rule-9(1)(bb) and 9(1)(e) of the Cenvat Credit Rules 2004 that deals with supplementary invoices, bills or challans etc evidencing the payment of tax by the recipient and therefore such a finding of the Commissioner (Appeals) that refund of Cenvat Credit is not admissible, if duty was paid under VCES Scheme, is not sustainable both in law and facts.

3.1. In support of his submission Ld. Counsel for the Appellant has produced copy of the Final Order No. A/85892/2024 passed on dated 10.09.2024 in the appellant's own case by this Tribunal in which reliance was placed on the earlier decision of this Tribunal passed in the case of C.C. S.T. Ahmedabad Vs. M/s. Oxygen Bio Research P Ltd on dated 17.07.2018 vide order NO. A/11534-11535/2018, to grant relief of such refund to the appellant.

4. In response to such submissions, Ld. Authorised Representative of the Respondent Department Mr. Dhananjay Dahiwale, Dy. Commissioner argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and placed emphasis on the wording of the language used under Section 109 of the VCES Rules 2013 that any amount

paid in pursuance to declaration made under Sub-Section (1) of Section 107 shall not be refundable under any circumstances and therefore, under no circumstances credit that would have accrued against payment of such tax dues can never be refunded to the appellant under any circumstances even if it has been an exporter having accumulated Cenvat Credit, a component of which was accrued through payment of duty from VCES Scheme that was being rejected and therefore the order passed by the Commissioner (Appeals) is not required to be interfered with by this Tribunal.

5. I have gone through the Appeal Paper Book, written note of submissions, relevant case laws placed on record on the issue and taken note of the submissions made by the adversaries. At the outset, it is to be placed on record that in respect of service tax, the VCES Scheme was introduced in 2013 to provide onetime amnesty to service tax defaulters and the primary objective of which was to encourage voluntary compliance, reduce litigation and expand the tax base that has been intended to assist those who failed to pay service tax, due to ignorance of law or other reasons, allowing them to pay their dues and avoid legal consequences, as reveals from its Statement of Objects and Reasons but the scheme has generated a host of complications for which one FAQs (frequently asked Questions) was issued by the Department to provide answers to such complications and ease the tax payers being burden with certain consequential effect and in the same FAQs that was issued on the basis of Circular NO. 169/4/2013-ST dated 13.05.2013 and 170/5/23013-ST dated 08.08.2013 by the CBEC is binding on the Departmental Authorities and in the said circular vide question No. 22 clarification is rendered to the effect that admissibility of Cenvat Credit has to be governed under the provisions of the Cenvat Credit Rules, 2004 and when CCR under Rule-5 clearly permits

such refund of CENVAT credit to the exporter, which in the instant case is not the tax dues but credit accrued after payment of tax dues, Appellant is entitled to get the same, to whom restriction enumerated under Rule 109 of the VCES Scheme 2013 as incorporated in Chapter-VI of amended Finance Act 2013 has no application. This fact has being well clarified and fortified through settled decision of this Tribunal passed in the appellant's own case as well as in the case of M/s. Oxygen Bio Research P Ltd cited supra, the relevant Para-4 which would read as hereunder;

"We have carefully considered the submission made by both the sides and perused the records. We find that as per the facts of the case it is not the refund in respect of the service tax paid by the respondent under VCES Scheme whereas the compliance of VCES Scheme was made. Once the service tax dues declared by respondent have already been paid, the next step is whether the respondent is eligible for CENVAT credit in respect of said service tax paid. As per clarification given by the board in the circular cited by the Ld. Counsel for the respondent. <u>The respondent was legally entitled for the CENVAT credit since CENVAT credit of the service tax paid on the reverse charge basis in respect of the input service</u>. Any service tax paid on the input service whether under VCES 3/Page ST/10509-10510/2016 <u>DB Scheme or otherwise the same is available as CENVAT Credit to the assessee. Once the CENVAT credit is legally admissible it is available either for utilization for payment of service tax/excise duty. In the present case, the appellant being SEZ Unit is entitled for the refund of CENVAT credit under notification No. 12/2013-ST. in these facts the case of the respondent does not fall under section 109 of the Finance Act, 2013, accordingly, the respondent is rightly entitled for the refund of CENVAT credit availed by them under Notification No. 12/2013-ST</u>. Therefore, we do not find any infirmity in the impugned order hence, the impugned orders are upheld and Revenue's appeals are dismissed."

(underlined to emphasise)

6. Going by the above precedent judgments on the basis of which in appellant's own case, relief was granted in respect of another appeal dated 10.09.2024 vide Final Order No. A/85892/2024, against which nothing is available on record to justify preference of any appeal by the Respondent Department, the following order is passed to ensure consistency and predictability to the orders passed by this Tribunal.

The Order

7. The appeal is allowed and Order-in-Appeal No.PUN-SVTAX-000-APP-230-16-17 dated 12.09.2016 passed by the Commissioner of Service Tax (Appeals), Pune to the extent of denial of Cenvat Credit of Rs. 10,87,454/- is hereby set aside enabling the appellant to receive the same as refund with applicable interest and the Respondent Commissioner is directed to pay the same within two months of receipt of this order.

(Order pronounced in the open court on 23.02.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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