
(2024) 04 CESTAT CK 0051

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 30202 Of 2020

C A D Vision Engineers Pvt Ltd

APPELLANT

Vs

Commissioner Of Customs & Central Tax (Appeals-I)
Hyderabad

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 5, 5A, 5B
Central Goods And Services Tax Act, 2017 — Section 140, 140(1), 140(5), 142, 142(3), 142(9)(b), 174
Central Excise Act 1944 — Section 11B, 11B(2)
General Clauses Act, 1977 — Section 6

Citation : (2024) 04 CESTAT CK 0051

Hon'ble Judges : A.K. Jyotishi, Member (T)

Bench : Single Bench

Advocate : K Prakash Babu, V R Pavan Kumar

Final Decision : Dismissed

Judgement

A.K. Jyotishi, Member (T)

1. M/s C A D Vision Engineers Private Limited (herein after referred to as Appellant) have filed an appeal against Order-in-Appeal No.HYD-SVTAX-RRC-APP-013-19-20 (APP-I), dated 23.08.2019. In the impugned order, Commissioner (Appeals) has upheld the Order passed by the Original Authority and dismissed the appeal filed by the appellant. The Original Authority had considered the request of the appellant for refund of service tax of Rs. 4,95,765/- paid on 06.12.2017, under reverse charge mechanism towards import of service. The Original Authority, interalia, felt that the service tax paid on 06.12.2017 was rightly paid in accordance with the law and also observed that the appellant had not carry forward the credit of the said amount in accordance with the provisions under Section 140 of CGST Act 2017 and Rules made thereunder. He further held that the claim of the appellant for entitlement of refund in cash under Section 142(3) of CGST Act 2017 (herein after referred to

as Act) is also not tenable in view of the fact that there was no expressed provision for refund in cash when a rightful amount was paid as per law and further that the question of refund in cash arises only when the existing law provides for the same and that there is no provision in the existing law or CGST Act for grant of refund in this case.

2. The Commissioner (Appeals) in his impugned order has examined the entitlement of refund under Section 142(3) of the Act read with Section 11B of the Central Excise Act 1944. Commissioner (Appeals) is of the view that since all the claims of refund has to be disposed off in accordance with the provision of the existing law and since there is no provision for claiming refund of credit of service tax paid under reverse charge mechanism on input services under the provisions of Cenvat Credit Rules 2004 or Finance Act 2004, therefore, they were not entitled for said refund. He also distinguished the case laws relied upon namely M/s Toshiba Machine (Chennai) Pvt Ltd., [Final Order No. 42462/2018 in Appeal No. E/40751/2018] and distinguished the same. Accordingly, he upheld the Order of the Original Authority.

3. Learned Counsel for the appellant has mainly argued that since they had paid the service tax post transition i.e 01.07.2017, and were otherwise entitled to take credit of the same, had they paid same amount before transition through TRAN-1 route, therefore, they are still entitled for refund of the same as credit which has substantially occurred to them, in terms of provisions under Section 142(3) of the Act. He further relies on various case laws including Collector of Central Excise, Pune Vs Dai Ichi Karkaria Ltd.,[1999 (08) LCX 0316 = 1999 (112) ELT 353 SC] in support that the credit is indefeasible and therefore they were substantively entitled to take the credit. They also made the plea that since they were not aware about dates for filing of TRAN-1, as the same being changed frequently, therefore they could not file otherwise they would have filed a revised TRAN-1 for carrying forward the credit of this service tax paid under reverse charge mechanism provision. He has also relied on certain case laws in support that denial of refund due to their failure to file revised TRAN-1 so as to carry forward is not correct and such vested right has to be allowed. Learned Advocate has also relied on the judgment of CESTAT Principal Bench in the case of M/s Bharat Heavy Electricals Ltd., Bhopal Vs Commissioner, CGST, Central Excise and Customs, Zone-II, Bhopal (Final Order No. 51849/2019 dated 26.04.2019 in EA No. 50081 of 2019), wherein, Tribunal held that since there is no provision in the newly enacted law that such credits would lapse and therefore, merely by change of legislation the appellants could not be put in a position to lose this valuable right and finally held that the assessee was eligible for the cash refund of cesses lying as cenvat credit as on 30.06.2017. They have also relied on the judgment in the case of M/s Brose India Automotive Systems Pvt Ltd., Pune Vs Commissioner of Central Excise and Customs, Pune vide Final Order No. A/85430/2022, wherein, the Tribunal held that the appeal was maintainable before CESTAT.

4. Learned DR, on the other hand has mainly supported the judgment passed by the Commissioner (Appeals) on the grounds that there is no provision under the existing law to grant refund of credit in respect of service tax paid under reverse charge mechanism and the provisions under Section 142(3) is quite clear that unless the refund of any such input credit is otherwise eligible under the existing law, the same cannot be considered for refund in cash in terms of under Section 142(3). He also points out that there is a clear cut provision under the Act for claiming such credit by way of revised return or by carrying forward the said amount of cenvat credit lying in balance and relating to the period immediately preceding the appointed day. However, the same is subject to certain restrictions including specified eligible duties, taxes etc., in respect of which the credit can be carried forward. In this case, it is an admitted fact that the appellants had not carried forward any credit of such tax using the provisions under Section 140.

5. Learned DR also points out that specific miscellaneous transition provisions have been made under the Act itself and therefore as claimed by the appellant that they were otherwise entitled for refund under Section 142(3) of the said Act, has to be examined in terms of the provisions under the said Section and Sub-Section. For the ease of reference, the provisions under Section 142(3) is reproduced below:

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.

His main argument is that the refund claim filed under Sub-section 3 has to be disposed off in accordance with the provisions of the existing law and the Section 142(3) does not independently provide any right to claim refund of any unutilized cenvat credit without fulfillment of conditions prescribed under the existing law. Learned DR has also relied on certain judgments in support of the facts that the appellants were not entitled for refund in cash. Some of the relevant cases relied upon are, as under:

- i. CCE, Tirupati Vs Rani Plastic Pipe Industries [2020 (6) TMI 356-CESTAT, Hyderabad]
- ii. Phoenix Industries Pvt Ltd., Vs CCE, Raigad [2014 (10) TMI 677-CESTAT,

Mumbai]

iii. IDOL Textile Ltd., Balaji Prints Ltd., Vs CCE [2019 (9) TMI 16-CESTAT, Mumbai]

6. Learned DR also points out that the case relied upon by the appellant, namely BHEL Vs Commissioner, CGST, has been stayed by the Hon'ble High Court of Madhya Pradesh vide their Order dated 18.03.2021.

7. Heard both the parties.

8. The crux of the issue is whether the appellant is entitled for refund in cash in respect of certain amount of service tax paid by them pursuant to the observation of the Department or otherwise. The appellant also have admitted that they have paid not only service tax on reverse charge basis but also interest and penalty as pointed out by the audit. They have also admitted that they had filed revised TRAN-1 for the same amount, which was rejected by the proper Officer under the Act and this refund which they have sought in cash, is an alternative provision available to them under the Act.

9. At the very outset, it is to be understood that after the introduction of GST Laws with effect from 01.07.2017 certain transitional provisions were made so as to ensure that certain provisions of the existing law are further carried forward and claims, liability etc., under the existing laws were to be disposed off in terms of provisions made in the Act. In so far as it relates to refund of cenvat credit, there are apparently three options available post introduction of GST Laws. Firstly, under Section 140 where specific and eligible cenvat credits under existing law were entitled for being carried forward under the new regime and to be taken as credit in their electronic ledger under the Act, subject to provisions under the relevant rules and procedures. The second provision was in terms of Section 142(3) and third under Section 142(9)(b). A plain reading of the provisions would indicate that, interalia, refund of any amount of tax or cenvat credit has to be disposed off in accordance with the provisions of the existing law and any amount eventually accruing to him shall be refunded to be paid in cash only, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of Sub-section 2 of Section 11B. Therefore, it is obvious that refund has to be examined first in terms of the relevant provisions, as it existed under the existing law, in this case Cenvat Credit Rules, 2004 or the Finance Act 1994.

10. The perusal of CCR under the existing law clearly brings out that the refund of unutilized cenvat credit can be made only for specific purpose under Rule 5, 5A and 5B, subject to certain prescribed/notified procedure, conditions and limitations etc., as may be specified or notified by notification. Also, it is obvious that there is no provision for refund of CENVAT credit either under CCR 2004 or Finance Act 1994 for service tax paid correctly, which in any case has not been disputed by the appellant. They have also admittedly not filed any revised ST-3 within the specified tax limit as would have been otherwise required under Section 142(9)(b).

11. Therefore, it is obvious that the nature of refund being sought in this case would not get covered in any one of these situations when there is no provision for refund of such cenvat credit or tax under existing law and I find much force in the argument of the Learned DR that Section 142(3) in itself is not a statutory provision for grant of refund, per se, as this is nothing but only an enabling Section for grant of refund, albeit in cash, notwithstanding certain provisions to the contrary in the Section 11B except relating to undue enrichment. Therefore, in this case, since the refund would not have been available under the provisions of the existing law, the same cannot be processed and allowed under Section 142(3) also and therefore refund of the tax or credit in respect of service tax paid under reverse charge mechanism for import of service after the appointed date would not be admissible to the appellant under the provisions of Section 142(3).

12. I have also perused the citations relied upon by the appellant in the case of BHEL. The Hon'ble Tribunal was dealing with the matter of grant of refund in cash in respect of certain "cesses", which is not the case here and therefore it is distinguishable. Moreover, as pointed out by Learned DR the said Order of the Hon'ble Tribunal has been stayed by Hon'ble High Court of Madhya Pradesh. The other citations relied upon are in relation to substantive right to claim input credit. However, I find that these judgments are in relation to the cenvat credit and it's admissibility under the erstwhile CCR and not in relation to the entitlement of refund under Section 142 of the Act. Moreover, as pointed out by the Learned DR, Division Bench of CESTAT, Hyderabad, in the case of CCE, Tirupati Vs Rani Plastic Pipe Industries [2020 (6) TMI 356-CESTAT,Hyd] has held that there is no provision in the CCR for refund of cenvat credit if the assessee is not able to utilize it for any other purpose, such as factory being closed and that it was also held that the Larger Bench of Hon'ble High Court of Bombay had held that no refund can be sanctioned under Section 11B if the assessee is unable to utilize cenvat credit on account of closure of manufacturing activities. Similar view was also held by the Division Bench of CESTAT in the case of Finex Industries Pvt Ltd., Vs CCE, which also examined, inter alia, the judgments in the case of Union of India Vs Slovak India Trading Co. Pvt Ltd., [2006 (201) ELT 559 (Kar)] and Union of India Vs Slovak India Trading Co. Pvt Ltd., [2008 (223) ELT A 170 (SC)].

13. Therefore, essentially when there is no provision in the law either under the Cenvat Credit Rules 2004 or in the Finance Act 1994 to allow cash refund, for such accumulated credit, Section 142(3), per se, cannot make it an eligible refund merely because the appellant have not been able to utilize on the ground of not having filed the revised return or were not able to take the TRAN-1 route etc., within specified time. I also observe that in the case of Banswara Syntex Vs CCE [2018 (91) TMI 1064], the Hon'ble Division Bench of Rajasthan High Court held that refund of accumulated unutilized credit on account of education cess and secondary and higher secondary education cess was not entitled for cash refund in view of their having no provision under the Act of 1944.

14. Further, I also find that the issue of the scope of Section 142(3) of the Act came up before Hon'ble Jharkhand High Court in the case of M/s Rungta Mines Vs CCE, Jamshedpur [2022-TIOL-252-HC-Jharkhand-GST]. In this case Hon'ble High Court, inter alia, held that the provision of Section 142(3) does not entitle a person to seek refund where no such rights occur under the existing law or new CGST regime in terms of provision of CGST Act and the rules framed and notification issued thereunder. Meaning thereby, Section 142(3) does not confer a new right which never existed under the old regime to the manner of giving relief if the person is not entitled under the existing law. The relevant paras of the judgment are reproduced below for ease of reference:

45. The provision of section 142(3) does not entitle a person to seek refund who has no such right under the existing law or where the right under the existing law has extinguished or where right under the new CGST regime with respect to such claim has not been exercised in terms of the provision of CGST, Act and the rules framed and notifications issued. Meaning thereby, section 142(3) does not confer a new right which never existed under the old regime except to the manner of giving relief by refund in cash if the person is found entitled under the existing law in terms of the existing law. Section 142(3) does not create any new right on any person but it saves the existing right which existed on the appointed day and provides the modalities for refund in cash if found entitled under the existing law as the entire claim is mandated to be dealt with as per the existing law. It neither revive any right which stood extinguished in terms of the existing law nor does it create a new right by virtue of coming into force of CGST, Act.

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.

47. The argument of the petitioner by referring to second proviso to section 142(3) of CGST Act that it indicates that section 142(3) would apply to the situations where the assessee has failed to take transitional credit under section 140(1), is also devoid of any merits. The second proviso only indicates that if the assessee has taken transitional credit he will not be entitled to refund. Certainly, an assessee cannot simultaneously claim transitional credit as well as refund of the same amount. The second proviso to section 143(2) cannot be said to be an eligibility condition to claim refund but is only a condition which governs refund as an assessee cannot be permitted to have transitional credit as well as refund of the same tax amount.

48. Section 140(5) applies under the circumstances where input services are received after the appointed day but the tax has been paid by the supplier under the existing law within the time and in the manner prescribed with a further condition that the invoice etc are recorded in the books of account of the such person within a period of 30 days from the appointed day. Section 140(5) also does not help the petitioner. Section 140 (5) has no applicability to the facts and

circumstances of this case. In the instant case, admittedly the services in the nature of "port services" were received by the petitioner in the month of April 2017 and invoice was also generated in the month of May 2017.

The ratio of the aforesaid judgment is squarely applicable to the facts of the case in so far as the interpretation of Section 142(3) of the Act is concerned. It must also be noted that a plain reading of provisions under the Act clearly supports this interpretation. There is no ambiguity in so far as wordings under Section 142(3) are concerned.

15. Therefore, having regard to rival submissions, citations and arguments, I find that there is no infirmity in the Order passed by the Commissioner (Appeals) upholding the Order of the Original Authority, who had rejected the claim of refund in cash filed by the appellant. Accordingly, the appeal filed by the appellant is liable to be dismissed.

16. Appeal dismissed.