(2020) 12 CESTAT CK 0043

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal Nos. 60833, 60836 Of 2018

M/s Great India Steel Fabricators @Hash Commissioner Of CE And ST-Panchkulaa

Date of Decision : 10-12-2020

Acts Referred:

Central Goods and Service Tax Act (CGST Act) 2017 — Section 142(3)

Citation : (2020) 12 CESTAT CK 0043

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Naveen Bindal, Bhasha Ram

Final Decision : Disposed Of

Judgement

1. The appellant is in appeal against the impugned order wherein their refund claim has been rejected in terms of the provisions effective from

01.03.2015 in case of deemed export.

2. When the matter taken up for hearing, the ld. Counsel for the appellant submits that on merits, he is not contesting the matter and taking alternative

plea that while filing the refund claim, they have reversed certain cenvat credit and as their claim of refund was pending before the adjudicating

authority, an amendment took place and Central Goods and Service Tax Act (CGST Act) 2017 was introduced in place of Central Excise Act, 1944.

The adjudication order was passed by the adjudicating authority after introduction of CGST Act 2017, therefore, the appellant was having no occasion

to raise the issue of re-credit of cenvat credit which have reserved before the adjudicating authority; therefore, in terms of Section 142(3) of the

CGST Act 2017, they are entitled for cash refund or re-credit to their cenvat credit account. The same view has been taken by this Tribunal in the

case of Rawalwasia Ispat Udyog Pvt Ltd vs. CCE Panchkula â?" 2019 (26) GSTL

196 (Tri. Chandigarh).

3. On the other hand, the ld. AR submits that it is a admitted position that the appellant is not entitled to claim the refund of the amount in question,

therefore, appeal deserve to be dismissed. With regard to re-credit of cenvat credit, it is a submission that the said issue was not raised by the

appellant before this Tribunal; therefore the same cannot be decided.

4. Heard the parties and considered the submissions.

5. It is a fact on record that when the appellant filed the refund claim of cenvat credit reversed by them, it was not the issue but with the introduction

of CGST Act 2017, the issue of re-credit was arise in terms of Section 142(3) of the CGST Act 2017 and the appellant was having no occasion to

raise the issue of the re-credit before the adjudicating authority as the adjudicating authority itself has passed the impugned order after introduction of

CGST Act 2017. Moreover, the issue of entitlement of re-credit is a legal issue and the same may be raised in the case proceedings; therefore, I

turned down the objection made by the ld. AR and considering the fact that the issue has already been decided by this Tribunal in the case of

Rawalwasia Ispat Udyog Pvt Ltd (supra), wherein this Tribunal has observed as under:

â??4. Considering the fact that as per Section 142(3) of CGST Act, 2017, which was enforced with effect from 1.7.2017 if any refund

arises on account of Cenvat credit, duty, tax, interest or any amount, the same shall be paid in cash to the assessee. Despite, clear-cut

provisions of law in GST regime, the Commissioner (Appeals) has allowed the refund to be credited in their Cenvat Credit account which is

against the spirit of law. In fact, the Commissioner (Appeals) by doing this act has dragged the appellant in unnecessary litigation before

this Tribunal, the act of the Commissioner (Appeals) cannot be appreciated. Therefore, I do not find any merit in the impugned order, the

same is set aside and the order of the adjudicating authority is restored.â??

6. In view of the above, I hold that the appellant is entitled to recredit of the amount already reversed before introduction of CGST Act 2017.

7. In these terms, the appeals are disposed of.

(Dictated and pronounced in open court)

