(2021) 03 CESTAT CK 0071

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40040 Of 2020

M/s. Indo Tech Transformers Ltd. — APPELLANT

Vs

Commissioner Of CGST And CE (Appeals-II) — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 142(6)(a)
Finance Act, 1994 — Section 76, 78

Citation : (2021) 03 CESTAT CK 0071

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : T. R. Ramesh, K. Komathi

Final Decision : Disposed Of

Judgement

1. This appeal is filed by the assessee against the order of the Commissioner (Appeals) No. 334/2019 dated 16.11.2019, whereby the Commissioner (Appeals) has rejected the appellant's claim for refund in cash under Section 142 (6) (a) of CGST Act 2017.

2.1 Shri T. R. Ramesh, learned Advocate appeared for the appellant and interalia submitted that the appellant had during the financial year2010-11 paid /made provisions towards royalty and trademark fee since the appellant was not aware as to the applicability of service tax on royalty and trademark fee; that the Revenue issued a Show Cause Notice dated 09.10.2013, wherein the payment of service tax along with interest was duly recorded and sought to appropriate service tax and also proposing to impose penalty under Sections 76 & 78 of the Finance Act, 1994; that considering the reply to the SCN, Order-in-Original dated 31.03.2016 came to be passed whereby the proposals made in the SCN came to be confirmed; thereafter the appellant preferred first appeal before the Commissioner (Appeals) who vide appellate order dated 30.09.2017 granted relief; that thereafter the appellant filed an application for refund in terms of Section 142 (6)(a) ibid; that the original authority issued a SCN dated

30.01.2019 proposing to deny the refund and thereafter passed the Order-in-Original denying the refund after observing that the assessee neither contested the taxability of the impugned services nor made any plea for allowing the impugned service tax payment as Cenvat Credit; that on further appeal, the Commissioner (Appeals) vide the impugned order has upheld the said rejection, etc.

2.2. Learned Advocate would also submit that the appellant had sought the permission of the original authority to take credit on the service tax paid which was so sought to be appropriated in the first SCN itself, which fact has been duly recorded at page-11 of the Order-in-Original No. 92/2016 dated 31.03.2016. He also drew my attention to the grounds of appeal against the said Order-in-Original filed before the first appellate authority, particularly to para No.2.6 of the grounds of appeal and thereafter to the findings of the appellate authority against the said Order-in-Appeal wherein the Commissioner (Appeals) has categorically observed that for payment under reverse charge mechanism, the appellant is entitled to take cenvat credit, as no suppression of facts with intent to evade service tax on the part of the appellant was proved.

2.3 Learned Advocate would thus conclude that the authorities below have clearly erred in denying the refund of Cenvat Credit. He also relies on Section 142 (6) (a) ibid to submit that the appellant is entitled for cash refund of cenvat credit allowed by the Commissioner (Appeals).

3. Per contra, Ms. K. Komathi, learned DR supported the findings of the lower authorities.

4.1 I have considered the rival contentions and gone through the documents placed on record. It is not in dispute that the order of Commissioner (Appeals) in the first round passed in No. 262/2017 dated 30.09.2017 has been accepted by the Revenue as well as the assessee without any further appeal. For this very reason, I do not agree with the so-called clarification made in the impugned order, of the earlier order dated 30.09.2017, by the Commissioner (Appeals). Moreover, it is manifestly clear that the observations were made in the context of payment under reverse charge mechanism vis-à-vis the appellant's entitlement to take cenvat credit for which the Commissioner (Appeals) had also drew support from the following decisions of the Hon'ble Supreme Court:-

1. Uniworth Textiles Ltd. Vs. CCE, Raipur 2013 (288) ELT 161 (S.C)

2. Continental Foundation JT. Venture Vs. CCE, Chandigarh 2007 (216) ELT 177 (S.C)

I do not propose to delve into the merits or demerits of this appellate order dated 30.09.2017 as the said order has attained finality.

4.2 Further, the adjudicating authority in the Order-in-original dated 31.03.2016 has also recorded the pleadings of the assessee as to their claim to take credit on the service tax paid, that was sought to be appropriated in the SCN. From the above observations, it is sufficient to hold that the appellant has all along maintained its claim for taking cenvat credit and therefore, to deny refund only on the ground that there was no such claim, is farce/far from truth.

4.3 For the above reasons, I am of the opinion that the impugned order is not sustainable for which reason the same is set aside. Admittedly, the issue is refund claimed under Section 142 (6) (a) of CGST Act, but I cannot go into that since CESTAT is not authorised to decide issues under CGST Act, 2017, as per appellant's request. The only possible order is to set aside the impugned order and remand the matter back to the file of the adjudicating authority, who shall keep in mind my observations in the earlier paragraphs and pass a final order, in accordance with law, after affording reasonable opportunity to the appellant leaving all contentions open.

5. The appeal is disposed on the above terms.

(Order pronounced in the Open Court on 25.03.2021)

