(2021) 03 CESTAT CK 0061

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 41533 Of 2019

M/s. Kaleesuwari Refinery Private Limited — APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise — RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 142(3), 142(6)
Central Excise Act, 1944 — Section 11B, 11B(ec)
Cenvat Credit Rules, 2004 — Rule 5, 6(3)

Citation : (2021) 03 CESTAT CK 0061

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : S. Vishnupriya, Vikas Jhajharia

Final Decision : Disposed Of

Judgement

1. By this appeal, the appellant is inter alia challenging the order of the First Appellate Authority who refused the refund claimed by the appellant purportedly under Section 142 (3) of the C.G.S.T. Act, 2017, in cash.

2.1 The submissions made by Ms. S. Vishnupriya, Learned Advocate appearing for the appellant, are as under:

(i) The appellant filed an application for refund vide application dated 20.08.2018 in Annexure-67, FORM-R - Application for refund of Excise Duty;

(ii) The above refund claim was made after the receipt of Final Order Nos. 41520 to 41521 of 2017 dated 08.08.2017 of the Division Bench of CESTAT, Chennai;

(iii) The claim of the appellant for refund has never been under Section 11B of the Central Excise Act, 1944 or under Rule 5 of the CENVAT Credit Rules, 2004;

(iv) The appellant, by mistake, filed its refund claim in FORM-R, but a simple application would have sufficed;

(v) What was claimed as refund was not of any Excise Duty or a part thereof and not even interest, but CENVAT Credit simpliciter;

(vi) There were two demands from the Excise Department to reverse the CENVAT Credits of: (1) Rs. 39,09,242/- for the period from June 2003 to September 2004 and (2) Rs. 49,00,194/- for the period from April 2003 to September 2004, which were for the same period. This overlapping was observed by the Division Bench of this Court in its Final Order (supra) whereby the CESTAT upheld the order dropping the demand of Rs. 39,09,292/-, allowed the credit to the extent of Rs. 39,09,242/- and disallowed the balance; the net effect of which made the appellant eligible to a credit of Rs. 39,09,292/- and ineligible for the credit of Rs. 9,90,900/-;

(vii) The appellant had reported unutilized CENVAT Credit of Rs. 61,47,722/- in its ER-1 return. Subsequent to the above Final Order of CESTAT, the appellant-company had reversed the CENVAT Credit balance of Rs. 22,38,480/-, being ineligible, in its Books of Accounts during March 2018 (also reflected in the appellant's letter dated 27.03.2019 filed before the Superintendent/Assistant Commissioner, Pallavaram Division);

(viii) The unutilized credit lying in the appellant's ER-1 return could not be utilized due to change in law with G.S.T. having been introduced and was also not transitioned to TRAN-1 under G.S.T.;

(ix) The refund claim being of the unutilized CENVAT Credit, Section 11B ibid. would not apply since no part of the Duty and interest was ever claimed as refund;

(x) Clause (ec) of Section 11B was also not applicable since the refund did not arise as a consequence of CESTAT's Order; (xi) Section 11B (ec) was inserted only for the benefit of the appellant and could not be made applicable against the appellant;

(xii) The unutilized credit was on account of pre-deposit which would amount to payment under protest, for which reason limitation under Section 11B is not applicable;

(xiii) The unutilized credit was only frozen, but not reversed, which was also under protest, etc.

2.2 Learned Advocate for the appellant also relies on the following decisions/ judicial interpretations :

(i) M/s. Affinity Express India Pvt. Ltd. v. C.C.E., Pune-I [2015 (37) S.T.R. 333 (Tri. - Mum.)];

(ii) C.C.E., Chennai v. M/s. Foxconn India (P) Ltd. [2010 (8) T.M.I. 468 - CESTAT, Chennai];

(iii) C.C.E. and Cus., Surat-I v. M/s. Swagat Synthetics [2008 (232) E.L.T. 413 (Guj.)];

(iv) M/s. Global Energy Food Industries v. C.C.E., Ahmedabad [2010 (262) E.L.T. 627 (Tri. - Ahmd.)]

(v) C.C.E., Nasik v. M/s. Nasik SSK Ltd. [2017 (4) T.M.I. 891 - CESTAT, Mumbai];

(vi) M/s. Natural Slate and Sandstone Exports (P) Ltd. and ors. v. C.C.E., Jaipur [2018 (2) T.M.I. 1560 CESTAT, New Delhi];

(vii) C.C.E. v. M/s. GTN Engineering [2012 (281) E.L.T. 185 (Mad.)];

(viii) M/s. MS Great India Steel Fabricators v. C.C.E. & S.T., Panchakula [2019 (3) T.M.I. 103 - CESTAT, Chandigarh)];

(ix) M/s. Rawalwasia Ispat Udyog Pvt. Ltd. v. C.C.E., Panchakula [2019 (7) T.M.I. 1242 - CESTAT, Chandigarh)];

(x) M/s. Toshiba Machine Pvt. Ltd. v. Commr of Central Tax, Outer Commissionerate, Chennai [2018 (9) T.M.I. 1576 - CESTAT, Chennai];

(xi) C.C.E., Coimbatore v. M/s. Pricol Ltd. [2015 (320) E.L.T. 703 (Mad.)];

(xii) C.C.E., Pondicherry v. Church's Auxiliary for Social Action (CASA) & ors. [2009 (2) T.M.I. 437 - CESTAT, Chennai];

(xiii) M/s. Sapa Extrustion Pvt. Ltd. v. Commr. of Central Tax, Tirupati [2019 (3) T.M.I. 1176 - CESTAT, Hyderabad]

3. Per contra, Shri Vikas Jhajharia, Learned Authorized Representative appearing for the Revenue, relied on the reasons given in the impugned order. He would also rely on the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of M/s. Mafatlal Industries Ltd. v. Union of India reported in 1997 (89) E.L.T. 247 (S.C.). He also relied on the decision of the Hon'ble jurisdictional High Court in the case of Commissioner of Central Excise, Coimbatore v. M/s. GTN Engineering (I) Ltd. reported in 2012 (281) E.L.T. 185 (Mad.).

4. In her rejoinder, Learned Advocate for the appellant would submit that the decision of the Hon'ble Madras High Court in the case of M/s. GTN Engineering (I) Ltd. (supra) was rendered in the context of Rule 5 of the CENVAT Credit Rules, 2004 and hence, the principles set out therein are not at all applicable to this case.

5. Heard both sides, perused the documents placed on record and have also gone through the various decisions relied upon/referred to during the course of arguments.

6. I do not find any disputes as regards the facts of the case. Crux of the appellant's case is refund of the unutilised credit, in cash, under S.142(6) of CGST Act, 2017 and not under S.11B and not even under Rule 5 of the CCR, 2004.

7.1 On the decisions/judicial precedents, my observations are as under:

(i) M/s. Affinity Express India Pvt. Ltd. v. C.C.E., Pune-I [2015 (37) S.T.R. 333 (Tri. - Mum.)]: This Order of the Mumbai Bench of the Tribunal is on refund under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006-C.E. (N.T.) dated 14.03.2006, which itself prescribed a timelimit as prescribed under Section 11B of the Central Excise Act and more or less similar to the case of M/s. GTN Engineering (I) Ltd. (supra).

(ii) C.C.E., Chennai v. M/s. Foxconn India (P) Ltd. [2010 (8) T.M.I. 468 - CESTAT, Chennai]: Here also, the refund claim was under Rule 5 of the CENVAT Credit Rules, 2004.

(iii) C.C.E. and Cus., Surat-I v. M/s. Swagat Synthetics [2008 (232) E.L.T. 413 (Guj.)]: The Hon'ble High Court has categorically ruled that for refund sought of unutilized deemed credit, provisions of Section 11B of the Central Excise Act, 1944 can have no play and cannot be applied; such deemed MODVAT Credit is not equal to Duty paid in the peculiar facts and circumstances of the case.

(iv) M/s. Global Energy Food Industries v. C.C.E., Ahmedabad [2010 (262) E.L.T. 627 (Tri. - Ahmd.)]: The refund claim was under Rule 5 of the CENVAT Credit Rules, 2004.

(v) C.C.E., Nasik v. M/s. Nasik SSK Ltd. [2017 (4) T.M.I. 891 - CESTAT, Mumbai]: The issue here related to the claim of refund of an amount equal to 5% / 6% paid/reversed by the appellant in terms of Rule 6 (3) of the CENVAT Credit Rules, 2004, to which the Learned Mumbai Bench had held that the limitation provided under Section 11B is not applicable.

(vi) M/s. Natural Slate and Sandstone Exports (P) Ltd. and ors. v. C.C.E., Jaipur [2018 (2) T.M.I. 1560 - CESTAT, New Delhi]: The refund claim of unutilized credit was made in terms of Rule 5 of the CENVAT Credit Rules, 2004, to which the Learned Bench had held that limitation under Section 11B is not applicable.

(vii) C.C.E. v. M/s. GTN Engineering [2012 (281) E.L.T. 185 (Mad.)]: The refund claims, as pleaded by the Learned Advocate, pertain to invoking of Rule 5 of the CENVAT Credit Rules, 2004 for refund of CENVAT Credit of Duty paid on inputs and capital goods.

(viii) M/s. MS Great India Steel Fabricators v. C.C.E. & S.T., Panchakula [2019 (3) T.M.I. 103 - CESTAT, Chandigarh)]: The appellant had filed refund claims of unutilized amount lying in their CENVAT Credit account under Rule 5 of the CENVAT Credit Rules, 2004.

(ix) M/s. Rawalwasia Ispat Udyog Pvt. Ltd. v. C.C.E., Panchakula [2019 (7) T.M.I. 1242 - CESTAT, Chandigarh)]: Refund was allowed by the FAA but the same was directed to be credited in their CENVAT Credit account.

(x) M/s. Toshiba Machine Pvt. Ltd. v. Commr of Central Tax, Outer Commissionerate, Chennai [2018 (9) T.M.I. 1576 - CESTAT, Chennai]: Pertains to the benefit of Notification No. 33/2012-C.E. - reversing an amount of 6% which was not required to be paid for availing the Notification benefit - which was claimed as refund.

(xi) C.C.E., Coimbatore v. M/s. Pricol Ltd. [2015 (320) E.L.T. 703 (Mad.)]: Relates to refund vis-à-vis Section 11A of the Central Excise Act, the recovery of Duty on the ground of unjust enrichment.

(xii) C.C.E., Pondicherry v. Church's Auxiliary for Social Action (CASA) & ors. [2009 (2) T.M.I. 437 - CESTAT, Chennai]: The case directly relates to claim of refund of Excise Duty in terms of Notification No. 32/2005-C.E. as amended by Notification No. 35/2005.

(xiii) M/s. Sapa Extrustion Pvt. Ltd. v. Commr. of Central Tax, Tirupati [2019 (3) T.M.I. 1176 - CESTAT, Hyderabad]: Also on the point of refund of excess Duty paid vis-à-vis unjust enrichment.

7.2 The above orders/decisions clearly are all on refund either under Section 11B of the Central Excise Act, 1944 or under Rule 5 of the CENVAT Credit Rules, 2004, which, as vehemently contended by Ms. S. Vishnupriya, Learned Advocate for the appellant, is not the case of the assessee/appellant.

8. In the case on hand, the submissions of the Learned Advocate, both verbal as also in the synopsis filed on 05.03.2021 (paragraph 10), coupled with the refund claimed through various letters, only indicate that the appellant is essentially claiming refund under Section 142(6) of the C.G.S.T. Act, per se. To decide the issue of refund under said section, CESTAT is not having jurisdiction since it pertains to examination and interpretation of a claim under the C.G.S.T. Act and to decide the eligibility or otherwise of the claimant under the C.G.S.T. Act.

9. It, however, appears that the appellant has an arguable case for refund under Central Excise Act, but since the claim is clearly under CGST Act, 2017 the jurisdiction over which is not vested with CESTAT, I dismiss the present appeal for want of jurisdiction.

(Order pronounced in the open court on 22.03.2021)