(2021) 06 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20346 Of 2020

M/s Rakon India Pvt. Ltd. (Formerly known as M/s Centum Rakon India Pvt. Ltd.) APPELLANT

Vs

Commissioner Of Central Tax, Bangalore North RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 5
Central Excise Act, 1944 — Section 11B
Central Goods and Services Tax Act, 2017 — Section 142(3), 142(5), 174(2)(c)

Citation : (2021) 06 CESTAT CK 0021

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Akbar Basha, C.V. Savitha

Final Decision : Allowed

Judgement

Particulars Amount Refund as per formula â??Aâ??,"Rs.60,12,607/-

Balance CENVAT credit available as on last day of quarter

(31.12.2016) B",Rs.47.67.628/-

Balance of CENVAT credit available on the date of filing refund i.e.

26.06.2017, C","Rs.8,60,35,578/-

Refund shall be minimum of A,B,C","Rs.47,67,628/-

6. After considering the submissions of both the parties and perusal of the material on record, I find that it is not disputed that the appellant debited an",

amount of Rs.60,12,607/- which resulted in excess debit of Rs.12,44,979/-. Further, I find that the appellant has filed the present refund claim under",

Section 11B and not under Rule 5 of CCR read with Notification No.27/2017. Further, I also find that after the introduction of GST, the appellant", could not transitioned the excess debit into TRAN-I. In that case, the only option for the appellant was to file a refund claim under Section 11B read",

with Section 142(5). Further, I find that the impugned order has not disputed the eligibility of credit debited in excess. After the introduction of GST in",

July 2017, there is no option provided to the noticee to avail CENVAT credit, as the returns have been suspended with regard to erstwhile regime.",

Consequently, the noticee filed the refund of the amount debited in excess in terms of provision 142(3) of CGST Act which was allowed as credit.",

Further to examine the relevant provisions of Section 142(3) and Section 142(5) which are reproduced herein below:,

â??142(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, nothwithstanding 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.â??,

â??142(5) Every claim filed by a person after the appointment day for refund of tax paid under the existing law in respect of services not,

provided 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 subsection (2) of",

section 11B of the Central Excise Act, 1944 (1 of 1944.)",

6.1. Further, I find that Order-in-Original dated 26.12.2017 restricted the amount of Rs.12,56,178/- and not rejected the same. Therefore, the",

impugned order wrongfully invoked the Section 142(3) to reject the refund claim. It is a fact that if CGST Law was not introduced, the appellant",

would have availed credit in ER-1 Returns and as per Section 174(2)(c) of CGST

Act, the appellant cannot be effected of its right, privilege, in",

availing credit merely in respect of refund rejected on account of limitation being passed after 27.12.2017. Further, I am of the opinion that change in",

taxation regime should not affect the credit availment right of assessee. Hence the appellant is rightly entitled for the credit and also refund.,

7. In view of my discussion above, I hold that the impugned order denying the refund by invoking Section 142(3) is not sustainable in law and I set",

aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.",

(Order pronounced in Open Court on 17/06/2021),