(2024) 06 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60240 Of 2021

M/S Sterimed Surgicals India Pvt Ltd — APPELLANT

Vs

Commissioner Of Central Excise, Service Tax & Customs, Rohtak — RESPONDENT

Date of Decision : 05-06-2024

Acts Referred:
Central Excise Rules, 2002 — Rule 12(5)
Credit Rules, 2004 — Rule 5
Central Goods And Services Tax Act, 2017 — Section 142(9)(b), 142(3)
Central Excise Act, 1944 — Section 11B

Citation : (2024) 06 CESTAT CK 0004

Hon'ble Judges : S. S. Garg, Member (J)

Bench : Single Bench

Advocate : Naveen Bindal, Narinder Singh, Shivam Syal

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 22.03.2021 passed by the Commissioner (Appeals) of Central Goods & Service Tax, Panchkula, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and allowed the appeal of the department.

2. Briefly stated facts of the present case are that the appellant is engaged in manufacturing of taxable goods and was registered with Central Excise department. The appellant had filed ER-1 return for the month of June 2017 on 10.07.2017 showing closing balance of Cenvat Credit amounting to Rs.50,59,597/-. The appellant was supposed to avail additional Cenvat Credit of excise duty amounting to Rs.8,70,297/- and of service tax amounting to Rs.12,45,063/-which could not be availed and taken in excise return filed for the month of June 2017. The appellant had the time to file revised return after availing additional cenvat credit of Rs.21,15,360/-. The appellant tried to file

revised return electronically but due to technical reasons, could not file revised return electronically. The appellant had no option and therefore, filed manual revised excise return and submitted with the department on 28.07.2017 which was duly acknowledged by the department. The appellant was eligible for the said credit and therefore, suo-moto took the credit by filing TRAN-1 on 20.12.2017. Thereafter, audit of the appellant took place for the period 2013-14 to 2016-17 (upto June 2017) on 27th, 28th & 29th September, 2018 and during the course of audit, the appellant was asked by the audit team to reverse Cenvat Credit of Rs.21,15,360/-taken in TRAN-1 which was not shown in original ER-1 return for the month of June 2017. The appellant was further advised to file refund of said Cenvat Credit. On insistence from the audit team, the appellant reversed the Cenvat Credit of Rs.21,15,360/- from electronic credit ledger maintained under GST vide debit entry No. 4 on 22.10.2018 and after reversal of input tax credit, the appellant filed refund claim of Rs.13,38,739/- because as per the appellant, the remaining amount of credit was not admissible being paid on 'Works Contract Service'. Thereafter, a show cause notice dated 14.06.2019 was issued to the appellant proposing denial of refund claim on the ground that refund is barred by limitation and on merits, is not admissible in view of Section 142(9)(b) of the CGST Act, 2017. The appellant filed detailed reply to the show cause notice and after following the due process, the adjudicating authority held that refund claim has been filed within time and also held that the appellant is entitled to Cenvat Credit but rejected the refund claim on the ground that revised excise return was not filed electronically (online) as required under Section 142(9)(b) of CGST Act, 2017 read with Rule 12(5) of Central Excise Rules, 2002. Aggrieved by the said order, both the appellant and the department filed appeal before the learned Commissioner (Appeals) and the learned Commissioner (Appeals) vide impugned order held that refund claim is not admissible in view of Section 142(9)(b) ibid as revised excise return was not filed electronically. As regards the departmental appeal, the learned Commissioner (Appeals) held that refund claim is barred by limitation. Hence, the appellant preferred the present appeal.

3. Heard both the parties and perused the records.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.2 He further submits that the Commissioner (Appeals) has wrongly held that refund claim filed on 29.03.2019, is time barred as refund of the Cenvat Credit has been filed which was not shown in excise and service tax returns for the period upto 30.06.2017; it means that the Commissioner (Appeals) has taken 30.06.2017 as the relevant date for the purpose of filing refund claim; whereas, in Explanation B to the Section 11B of the Central Excise Act, 1944, relevant date has been prescribed. As per clause (f) of Explanation B, date of payment of duty is the relevant date for the purpose of filing of refund claim. In the present case, the appellant took Cenvat Credit and filed TRAN-1 to carry forward the same under GST regime. On being pointed out by the audit team, the appellant debited the credit ledger and therefore, the appellant became eligible to file refund claim only after debiting the credit ledger and hence, in the present case, the refund arose when the appellant debited the credit account; thus, the date of debiting of account is the relevant date and from that date, the appellant has filed refund claim within one year. Therefore, the adjudicating authority has rightly held that the claim has been filed within limitation after relying upon various judgments, but the Commissioner (Appeals) reversed the finding without any cogent and convincing reasoning.

4.3 He further submits that the appellant tried to file the return electronically but due to some technical reason, the appellant failed to do so. During this relevant period, the assessees were facing various technical glitches even for filing TRAN-1 and the department refused to allow filing of TRAN-1 after the due date. The matter reached at various High Courts and Hon'ble High Courts allowed filing TRAN-1 which could not be filed due to technical glitches. The Hon'ble High Courts allowed the petitions even though the Petitioners were not having proof of technical glitches faced at the time of filing of TRAN-1. In the present case, the appellant tried to file return electronically but due to technical reasons, could not do so and if the appellant can file return manually, the appellant could have certainly file return electronically; therefore, there seems no reason to doubt that the appellant did not face any technical difficulty in filing revised excise return. The appellant filed revised return manually on 28.07.2017 and the same was duly acknowledged by the department.

4.4 He further submits that it is nowhere mentioned that revised return is to be filed electronically and the requirement of the law is filing of revised return within time which the appellant, in the present case, has filed; therefore, in view of Section 142(9)(b) ibid refund is duly admissible to the appellant, especially when substantial conditions have been fulfilled.

4.5 He further submits that the appellant is also entitled to cash refund of un-utilized Cenvat Credit under Rule 5 of Cenvat Credit Rules, 2004 read with Section 11B of the Central Excise Act, 1944. In this regard, he relies on the judgment of Hon'ble Punjab & Haryana High Court in case of Commissioner of CGST vs. Shree Krishna

Paper Mills & Industries Ltd. & Others passed in CEA No. 36 of 2019 vide order dated 11.12.2019.

4.6 Further, in support of his submissions, the learned Counsel also relies on the following case-laws:

• Sri Chakra Poly Plast India Pvt Ltd vs Commissioner of Central Tax – Final Order No. 30030/2024 dated 18.01.2024 in Appeal No. E/30372/2022 – CESTAT Hyderabad

• Reiter India Ltd vs. Commissioner of CE – 2018 (363) ELT 1064 (Tri. Mumbai)

• Vishnu Aroma Pouching Pvt Ltd vs. UOI – 2019 (26) GSTL 14 (Guj.)

• A B Pal Electricals Pvt Ltd vs. UOI - W.P. (C) 6537/2019

• R R Distributors Pvt Ltd vs. Commissioner of Central Tax & others - W.P. (C) 4143/2020

• Commissioner of CGST vs. Shree Krishna Paper Mills & Industries Ltd – C.E.A. No. 36 of 2019

• Asstt Commissioner of CGST vs. Ganges International Pvt Ltd – 2023 (68) GSTL 134 (Mad.)

• Punjab National Bank vs. Commissioner of CGST & CE – 2022 (67) GSTL 467 (Tri. Delhi)

5. On the other hand, the learned AR for the Revenue reiterated the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, I find that the only issue involved in the present case is whether the appellant is entitled to refund amounting to Rs.13,38,739/- under Section 11B of the Central Excise Act, 1944 read with Section 142(9)(b) and Section 142(3) of the CGST Act, 1944.

7. I find that the appellant reversed the Cenvat Credit of Rs.21,15,360/- from the electronic credit ledger maintained under GST vide debit entry No. 4 on 22.10.2018 and after the reversal of the same, the appellant filed the refund claim of Rs.13,38,739/-, which is in dispute. The show cause notice was proposed to deny the refund on limitation as well as on merits under Section 142(9)(b) ibid on the ground that the revised return has not been filed electronically. It is pertinent to note that the adjudicating authority found that the refund claim is within time and also held that the appellant is entitled to Cenvat Credit, but rejected the refund only on the ground that revised return was not filed electronically as required under Section 142(9)(b) ibid read with Rule 12(5) of the Central Excise Rules, 2002.

8. Further, I find that the learned Commissioner (Appeals) in the departmental appeal, has held that the refund was filed beyond the period of limitation because the learned Commissioner (Appeals) has taken 30.06.2017 as the relevant date for the purpose of filing refund claim; whereas, as per Explanation B to the Section 11B ibid the date of debiting of the account is the relevant date and from that date, the appellant has filed the refund claim within one year from the relevant date; and therefore, the refund claim was within time. Thus, the findings of the learned Commissioner (Appeals) are to be set aside and I do so.

9. As regards the other ground, I find that the appellant could not file the revised return electronically due to certain technical reasons. The appellant filed the

revised return manually. I find that during the period of dispute, a lot of assessees were facing various technical glitches even for filing TRAN-1 and number of petitions were filed before the various Hon’ble High Courts, which allowed filing of TRAN-1 after period of limitation. In the present case, I find no reason that the appellant intentionally did not file the revised return electronically.

10. Further, I find that as per the provisions to Section 142(9)(b) ibid it is not mandatory that revised return is to be filed electronically and the requirement of the law is filing of revised return within time which the appellant, in the present case, has done; therefore, in my view, as per Section 142(9)(b) ibid, refund is duly admissible to the appellant, especially when substantial conditions have been fulfilled by the appellant.

11. In view of my discussion above, I am of the considered view that the impugned order is not sustainable in law and accordingly, the same is liable to be set aside and I do so by allowing the appeal of the appellant with consequential relief, if any, as per law.