(2021) 03 CESTAT CK 0107

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 76114 Of 2019

M/s.Pricewaterhouse Coopers Service Delivery Center (Kolkata) Private Limited — APPELLANT

Vs

Commissioner Of CGST And CX, Kolkata North Commissionerate — RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 3(5C), 5
Central Excise Act, 1944 — Section 11B, 11B(2), 11BB
Central Excise Rules 2002 — Rule 21
Central Excise Rules 1944 — Rule 57F, 57FD

Citation : (2021) 03 CESTAT CK 0107

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Advocate : N.K.Kothari, K.Choudhury

Final Decision : Allowed

Judgement

1. The instant appeal has been filed by M/s.Pricewaterhouse Coopers Service Delivery Center (Kolkata) Pvt. Ltd., against the Order-in-Appeal dated

31.01.2019 passed by the learned Commissioner (Appeals), Kolkata, upholding the rejection of refund claim as adjudicated by the Asst. Commissioner

vide Order-in-Original dated 19.05.2015, for the period April 2011 to September 2011.

2. Briefly stated, the facts of the case are that the appellant company is a provider of service to its overseas clients which constitute export of service

on which no output service tax is payable. The appellant is availing various input services which is claimed as CENVAT credit under the provisions of

CENVAT Credit Rules, 2004 (Credit Rules). Service tax on said input service used for export of service is being claimed as refund under Rule 5 of the said Credit Rules. There is no dispute with regard to the nature of services rendered by the appellant company which qualify as export of service.

The appellant company is pleading their case on four issues:-

(i) Admissibility of credit of Rs.17,43,376/- on â??renting of immovable property servicesâ?? and consequential refund thereof,

(ii) Admissibility of credit of Rs.9,29,646/- on â??general insurance serviceâ?? and consequential refund thereof,

(iii) Manner of calculation of refund as per Rule 5 of the Credit Rules and

(iv) Entitlement of interest under Section 11BB of the Central Excise Act (as also made applicable to Service Tax) on delayed refund amount

3. Heard both sides through video conferencing and perused the appeal records. Written submissions and additional documents submitted by the

appellants have also been perused.

4. The learned Chartered Accountant appearing for the appellant company submitted that credit on item No. (i) has been denied by the Department on

the ground that the office premises in respect of which rent has been paid relates to premises No. Y-14 which is used both by the appellant company

as well as other company, namely, PricewaterhouseCoopers Pvt. Ltd which is factually incorrect. He submitted that the rent alongwith Service Tax

thereon has been paid to the landlord, South City Projects (Kolkata) Ltd. for premises namely â??South City Pinnacleâ?? (for occupying t8h to 13th

floor) which is solely used by the appellant company and not the one, PricewaterhouseCoopers Pvt. Ltd. as alleged by the Department. He submitted

copy of the lease agreement and a certificate obtained from the landlord company to support his contentions.

For dispute in item No. (ii) he submitted that credit has been denied on â??general insurance servicesâ?? on the ground that said insurance services

relate to premises No. Y-14 and used on shared basis both by the appellant company and the other company PricewaterhouseCoopers Pvt. Ltd..

In respect of dispute in item No. (iii) he submitted that both the authorities below have made a computation error in determining the â??eligible refund

amountâ?? by applying the ratio of export turnover to total turnover (incl. domestic turnover) on the credit amount net of amount utilised for payment

of output Service Tax on domestic services. He accordingly submitted that the same is not in accordance with Rule 5 of the Credit Rules.

In respect of issue No. (iv), he submitted that since there has been delay in payment of refund amount, they are entitled to interest under Section

11BB of the Act. He relied upon the decision of Honâ??ble Gujrat High Court in the case of CCE vs. Reliance Industries Ltd. [2010 (259) ELT 356

(Guj)] as affirmed by the Honâ??ble Supreme Court reported in 2011 (274) ELT A110 (SC).

5. Supporting the findings made in the impugned appeal order, Shri K.Choudhury, learned Authorized Representative for the respondent Revenue

reiterated the findings made therein and prayed that the appeal be rejected being devoid of any merit.

6. With regard to issue No.(i), I have perused the lease agreement dated 1st August, 2010, which shows that property in question, occupied on rent by

the appellant, is premises being Plot No. X1-1 and not Plot No. Y-14 and therefore the lower authorities have made a factual error. On perusal of

sample invoice enclosed in the appeal paper book, I find that invoice has been issued by South City Projects (Kolkata) Limited in favour of the

appellant i.e. PricewaterhouseCoopers Service Delivery Center (Kolkata) Pvt. Ltd., South City Pinnacle addressed at Plot No. Y-14. On further

perusal of the aforesaid lease agreement, I note that the appellant had their registered office at Plot No. Y-14 for which reason the same has been

mentioned in the invoice. The certificate issued by the landlord clearly mentions that they have rendered renting of immovable property services to the

appellant in respect of rented premises i.e. South City Pinnacle situated at Plot No. X1-1. In view of the said factual matrix, there is no reason to

dispute the receipt of services by the appellant in the absence of any contrary finding. The objection raised by the Department that office at Plot No.

Y-14 has also been shared with the other company is not supported by any evidence and hence cannot be accepted merely on presumption basis. On

the same count, there is no reason to deny credit on general insurance services availed by the appellant at their office premises i.e. South City

Pinnacle. I accordingly allow the credit on both the said services.

7. With regard to dispute No. (iii) for manner of computation of eligible refund, it is noted that as per the formula prescribed in Rule 5 of the Credit

Rules, â??refund amountâ?? need to be ascertained by applying the ratio of value of export turnover to the total turnover on the â??net CENVAT

Credit amountâ?. The said â??net CENVT credit amountâ? is the total of credit availed on inputs and inputs services as reduced by the amount in

terms of Rule 3(5C). The said Rule 3(5C) is the amount to be paid by the manufacturer of excisable goods for corresponding inputs used for

manufacture of goods on which duty has been remitted under Rule 21 of the Central Excise Rules. The said Rule 3(5C) has no relevance in the given

case of assessee who is a service provider and not the manufacturer. Therefore, there cannot be any question of making any deduction of the amount

of credit utilised for payment of output service tax on domestic services in order to arrive at â??net CENVAT creditâ? since not prescribed in the

Rules.

Even otherwise also, when the ratio of â??value of export turnover to the total turnoverâ? is applied on the net CENVAT Credit amount, the resultant

amount is the proportionate amount relating to export of services which stands refundable to the exporter of services. The Department therefore made

a fundamental error in so far as computation of refundable amount is concerned. I therefore allow the claim of the appellant in this regard.

8. In so far as the subject of interest is concerned as is referred in point no. (iv) above, I find that the law is amply clear that when there has been a

delay in payment of refund amount, the assessee is entitled for interest under Section 11BB. The relevant portion of the observation made by

Honâ??ble Gujarat High Court in Reliance Insurance Ltd. (Supra) is reproduced below:-

10. Section 11-BB of the Act makes provision for payment of interest from the date immediately after expiry of three months from the date

of receipt of the application under sub-section (1) of that section, till the date of refund of such duty at such rate as may be fixed by the

Central Government by notification in the Official Gazette subject to the minimum and maximum limits specified thereunder, if any duty

ordered to be refunded under sub-section (2) of Section 11-B to any applicant is not refunded within three months from the date of receipt of

such application. Thus, section 11BB of the Act would be attracted in case where there is delay in refunding the amount of duty ordered to

be refunded under sub-section (2) of section 11B of the Act. Refund under Rule 5 of the Rules also being a refund under sub-section (2) of

Section 11B of the Act would therefore, squarely fall within the ambit of Section 11BB of the Act and interest would be payable under

Section 11BB of the Act in case of delay in sanctioning refund under Rule 5 of the Rules.

11. There is a basic fallacy in the premise on which the contention of Revenue is based. Cenvat credit is nothing else but credit for duty paid

by the supplier of inputs, which are dutiable goods manufactured by the supplier or dutiable services rendered by the service provider. In

principle such goods/services when utilised for further manufacture or providing service which are dutiable already carry the duty paid

component as a part of its price/value, and hence the duty payable on the ultimately manufactured goods/services rendered stands reduced

to the extent of duty already paid on the inputs. Thus the duty paid on inputs by the supplier has already been actually received by the

exchequer. Therefore, this contention is, to say the least, misconceived.

12. On the facts and in the circumstances of the present case, admittedly the refund has been ordered under Rule 5 of the Rules and there

was a delay in sanctioning the refund, in the circumstances, the provisions of Section 11BB of the Act would clearly be attracted and as such

the Tribunal was justified in holding that the provisions of clause (c) of the proviso to sub-section (2) of Section 11B and consequently Section

11BB of the Act are clearly applicable to the facts of the present case and as such the respondent is entitled to interest on delayed refund of

Cenvat Credit as claimed by it.

13. Another aspect of the matter is that when Section 11BB of the Act had newly been inserted by the Finance Act, 1995, the Government of

India, Ministry of Finance (Department of Revenue) has issued Circular : 130/41/95-CX., dated 30th May, 1995 (which finds reference in

the impugned order of the Tribunal) issuing instructions regarding refunds claimed under Section 11BB of the Act. The Annexure thereto

provides for the checklist of documents which are required to be filed with refund claims. Item No. 3 thereunder relates to â??Refund of

credit of duty paid on excisable goods used as input in accordance with Rule 57FDâ?. Thus, as per the instructions issued by the Central

Government refunds under Rule 57F of the erstwhile Central Excise Rules, 1944 would be governed by the provisions of Section 11BB of

the Act. Rule 57F of the said Rules made provision for the manner of utilisation of inputs and credit allowed in respect of duty paid thereon.

Sub-rule (13) of rule 57F made provision for refund of accumulated credit in case where for any reason it was not possible to adjust the

same in the manner provided under the said sub-rule. Subrule (13) of Rule 57F of the said Rules is more or less in parimateria to the

provisions of Rule 5 of the Cenvat Credit Rules, 2002/2004. Thus, the instructions issued by the Central Government under the aforesaid

Circular would also be applicable to refunds under rule 5 of the Rules, which instructions are binding on the revenue.

14. In light of the aforesaid, it is not possible to state that the Tribunal has committed any legal error so as to warrant interference. In the

absence of any question of law, much less, a substantial question of law, the appeals are dismissed.

I find that the original authority has not dealt with the entitlement of interest. Further, in appeal also, the learned Commissioner has not given any

finding despite that the appellant assessee has taken the same in their grounds of appeal. Since there has been a delay in sanctioning refund, I uphold

the appellantâ??s entitlement to interest by following the ratio of the above cited decision.

In view of the aforesaid finding, I consider it fit to remand the matter to the original authority who would quantify and grant refund arising out of the

issues No. (i), (ii) and (iii) and applicable interest thereon as per law. Appeal is thus allowed by way of remand in the above terms.

(Order pronounced in the open court on 09 March 2021.)

