(2024) 01 CESTAT CK 0076

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 60591 Of 2018

Sigma Moulds Nad Stampings Pvt. Ltd — APPELLANT

Vs

Commissioner Of Central Excise Goods And Service Tax, Gurgaon-II — RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:
CEnvat Credit Rules, 2004 — Rule 2(l)

Citation : (2024) 01 CESTAT CK 0076

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

Bench : Single Bench

Advocate : Joy Kumar, Narinder Singh, Aneesh Dewan

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 30.09.2014 whereby the Learned Commissioner (Appeals) has rejected the refund of the appellant being time barred and upheld the order-in-original.

2. Briefly the facts of the present case are that the appellant are engaged in the manufacture of Auto Parts falling under Chapter Sub-heading No. 8708 and are registered under the Service Tax Act, 1994. The appellant filed a refund claim of Rs. 2,59,052/- on 19.02.2013 of service tax paid on specified services used for export of goods during the year 2008, 2009 and 2010 under Notification No. 52/2011-ST dated 30.12.2011.

2.1. After following due process, the Original Authority rejected the refund claim vide its order dated 10.06.2013 on the ground that the same has been filed after stipulated period of one year as prescribed under the law.

2.2 Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who has also rejected the appeal of the appellant.

2.3 Hence, the present appeal.

3. Heard both the parties and perused the material on records.

4. Learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law. He further submitted that the impugned order qua rejecting the appeal on the ground of wrong mentioning of the notification number in the application for refund cannot be valid ground for rejection of the claim if otherwise admissible.

4.1 Learned Counsel further concedes that as per the terms of paragraph 3(g) of the Notification No. 41/2012-ST dated 29.06.2012 namely "the claim for refund of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods."

4.2 Learned Counsel further submits that though the refund claim filed by the appellant was not in compliance with the condition of the notification with regard to time, he prays that if refund is not granted to the appellant then at least he should be allowed to take cenvat credit of input services as defined under Rule 2(l) of CCR, 2004. In support of his submissions, the Learned Counsel relied upon the following decisions:-

• M/s Sigma Vibracoustic (India) Pvt. Ltd, Mohali vs. Commissioner, Central Excise, Chandigarh-I vide Final Order No. 60669-60670/2017 dated 25.04.2017.

• Kennametal India Ltd. vs. Commissioner of C.Ex. Ltu, Bangalore 2016 (46) STR 57 (Tri.-Bang.)

• Mahindra Reva Electric Vehicles (P) Ltd. vs. CCE, Service Tax, Bangalore-I 2017 (3) GSTL 75 (Tri.-Bang.)

• Commissioner vs. Dynamic Industries Ltd. – 2014 (35) STR 674 (Guj.)

• Commissioner of Central Excise, Raipur vs. Bhilai Engineering Corporation Ltd. 2016 (41) STR 774 (Tri.-Del.)

5. On the other hand, the Learned Authorized Representative defended the impugned order and submits that under the Notification it is strictly provided that the claim of refund shall be filed within one year from the date of export of the said goods whereas in the present case, admittedly, the refund was filed beyond the period of limitation and consequently, both the authorities below have rejected the same. He further submits that the judgements relied upon by the appellants relates to admissibility of cenvat credit of CHA Services which is not the issue in dispute in the present case.

5.1 Learned Authorized Representative also relied upon the decisions of Revisionary Authority in the case of B. B. Chemicals reported in 2012 (280) ELT 581 (G.O.I).

6. After considering the submissions of both the parties and perusal of the

material on record, I find that admittedly, the appellant has filed the refund claim beyond the stipulated period of one year as prescribed under the law and consequently, the Original Authority as well as the Appellate Authority have rejected the refund claim only on the ground of limitation. Further, I find that both the Notification No. 52/2011-ST dated 30.12.2013 and the subsequent Notification No. 41/2012-ST dated 29.06.2012 clearly provides that the refund claim shall be filed within one year from the date of export of goods and in the present case, admittedly, the refund has been filed after the limitation period is over. The prayer of the Learned Counsel for the appellant that he may be allowed to take the cenvat credit at this stage, cannot be entertained because it would amount to allowing rebate which is not provided in the notification.

6.1. Further, I find that the decisions relied upon by the appellant are not directly relates to the refund of cenvat credit of CHA Service which is not the issue in the present case.

6.2 Further, those decisions relied upon by the appellant are not applicable in the present case, therefore, in view of my discussion above, I do not find any infirmity in the impugned order which is upheld by rejecting the appeal of the appellant.