(2021) 06 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20911 Of 2019

Suzlon Energy Ltd. APPELLANT

Vs

C.E, S.T-Commissioner Of Central Excise And Central Tax, Mangalore Commissionerate RESPONDENT

Date of Decision : 15-06-2021

Acts Referred:
Central Goods and Services Tax Act, 2017 — Section 173
Central Excise Act, 1944 — Section 11B
Customs Act, 1962 — Section 27

Citation : (2021) 06 CESTAT CK 0010

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

Bench : Single Bench

Advocate : M. Karthikeyan, C.V. Savitha

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dt. 10/07/2019 passed by the Commissioner of Central Tax (Appeals), Belgaum whereby

the appeal of the appellant was dismissed upholding the Order-in-Original.

2. Briefly, the facts of the present case are that the appellant is a SEZ unit manufacturing and exporting wind mill parts falling under Chapter Heading

No.8503 of CETA, 1985. Appellant filed refund claim of service tax of Rs.43,65,479/- in terms of Notification No.12/2013- ST dt. 01/07/2013 in

respect of service tax paid on â??Management or Business Consultant Service, Rent-a-Cab scheme operator service and Transportation of Goods by

Road Serviceâ?? during the period from July 2017 to September 2017. The said refund claim was filed on 29/05/2018. Thereafter the Department

issued a show-cause notice dt. 23/07/2018 proposing to reject the refund claim on the ground that with the introduction of CGST Act, 2017, Chapter V of the Finance Act, 1994 has been omitted by virtue of Section 173 of the CGST Act and consequently the refund claim has been filed beyond one

year from the end of the month in which actual payment of service tax was made by the claimants. After following the due process, the Assistant

Commissioner vide Order-in-Original dt. 12/12/2018 rejected the refund of Rs.43,54,365/- in respect of Management or Business Consultant Services

and only sanctioned a refund of Rs.11,114/- in respect of Rent-a-cab operator service and GTA service. Aggrieved by the said Order-in-Original, the

appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide the impugned order rejected the appeal and upheld

the order passed by the Assistant Commissioner. Hence the present appeal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly

appreciating the facts and the law and the binding judicial precedents. He further submitted that the appellant has given sufficient grounds for seeking

condonation of delay in filing the refund application along with refund application itself but the Assistant Commissioner has not considered those

grounds and merely observed that the grounds for seeking condonation do not appear to be genuine. He further submitted that both the authorities has

failed to appreciate that the appellant submitted sufficient reasons for the delay in claiming refund in their letter dt. 29.05.2018 wherein they had

specifically submitted that their plant was closed for almost 32 months from October, 2015 onwards due to adverse business conditions; that

concerned employees have left the appellant company; that the files relating to invoices were inadvertently misplaced; that when clearing the old files,

they found the same; that the delay is due to genuine reasons and not intentional in filing the refund claim. But all these reasons have not been

considered by the Assistant Commissioner. He further submitted that as per the Notification No.12/2013-ST dt. 01/07/2013, the Assistant

Commissioner is having discretionary powers to extend the time frame for filing of the refund claim. He further submitted that the substantial benefit

of refund should not be denied particularly when the sanctioning authority has been vested with the discretion to grant extension of time in terms of

condition stipulated in para 3(III)(e) of the said Notification. Learned counsel also submitted that in their own case reported in 2016(43) STR 468 (Tri.

Bang.), this Tribunal has condoned the delay in filing the refund application. He also cited their own Final Order No.21497/2014 dt. 25/08/2014, there

also the delay was condoned. He further submitted that the appellant has a good case on merit and has complied with all the conditions of the

Notification and the SEZ Act which provides for refund of cenvat credit of service tax paid on input services. He further submitted the learned

Commissioner(Appeals) in the impugned order has wrongly relied upon the decision in the case of Kaushal Construction & Co. Vs. CCE, Panchkula

[2014(4) ECS (170) (Tri. Del.)] wherein the Tribunal has rejected the request of the assessee for condonation of 262 days delay in filing the appeal.

Learned counsel submitted that this decision of the Tribunal was set aside by the Honâ??ble High Court of Punjab & Haryana vide its order dt.

06.04.2015 reported in 2015(40) STR 38 (P&H). He further submitted that the Commissioner (Appeals) has relied upon the decision of the Apex

Court in the case of Singh Enterprises Vs. CCE [2008(221) ELT 163 (SC)]. Learned counsel further submitted that the decision of the Apex Court in

the case of Singh Enterprises is not applicable in the present case because in the present case there is a delay in filing the refund claim and not the

delay in filing the appeal before the Commissioner (Appeals). learned counsel also relied upon the decision of the Tribunal, Hyderabad Bench in the

case of WS Industries (India) Ltd. Vs. CC&CT [2019(12) TMI 1091 â?" CESTAT Hyderabad] wherein under identical circumstances, the Tribunal

has condoned the delay in filing the refund claim.

5. On the other hand, the learned AR supported the impugned order as well as the order of the lower authority. He asserts that the refund claim must

be filed within the time limit prescribed in the exemption Notification. If there is any delay, there must be sufficient grounds for doing so but the

appellant had not produced sufficient grounds and therefore, their request for condonation of delay was correctly rejected by both the authorities

below.

6.1. After considering the submissions of both the parties and perusal of the material on record, I find that the short point to be decided in the present

appeal is whether the Assistant Commissioner/ Deputy Commissioner was correct in rejecting the request of the appellant for condonation of delay in filing the refund claim under Notification No.12/2013-ST dt. 01/07/2013 when the Notification has provided for such condonation. Further I find that

the appellant has given detailed reasons in their letter dt. 29.05.2018 filed along with the refund claim application wherein they have given specific

reasons explaining the delay but the Assistant Commissioner did not consider those reasons and simply observed that they are not genuine. Further I

find that the Notification No.12/2013 itself gives him a discretion to condone the delay for bona fide reasons and in the present case, the reasons given

by the appellant are very much genuine. Further I find that in the appellants own case for the earlier period, the delay in filing the refund claim was

condoned. Here it is relevant to reproduce the finding in the appellantâ??s own case reported in 2016(43) STR 468 (Tri. Bang.), which is as under:-

4.I have heard learned counsel for the parties and perused the records. The only question to be decided in this appeal is whether a separate

application is required to be filed along with refund for seeking extension of time for filing the refund application or the ground for

extension of stay along with the refund application is sufficient to condone the delay in filing the application. The appellant has relied upon

the decision of this Tribunal cited supra wherein it has been held that no separate application for extension of time for filing refund

application is required and the prayer for extension of time can be made in the refund application itself. The appellant has also produced

an order passed by Commissioner (Appeals) in their own case in Appeal No. 291/2012, dated 12-7- 2012 wherein the learned Commissioner

(Appeals) allowed the appeal and set aside the order passed by the Assistant Commissioner rejecting the application of the appellant on

limitation and moreover, the spirit of the notification is such that a liberal approach would be adopted while considering the condonation of

delay in filing the refund application. The learned appellantâ??s counselâ??s argument that since the scheme was new and there was lot

of confusion regarding the same on account of lack of knowledge, a separate application along with refund claim was not filed and

keeping in view the decision of the Tribunal in the case of Rallies India Ltd. v. CC cited (supra), I am of the considered opinion that the

impugned order is liable to be set aside and I do the same and remand both the appeals to the adjudicating authority to decide the claim of the appellant on merits and the appellant should produce before the adjudicating authority all the documentary evidence which is in his

possession to claim the said refund. With these observations, I set aside the impugned order. Further I direct the adjudicating authority to

decide the claim of the appellant within a period of three months from the receipt of the certified copy of the order.

6.2. Further I find that in an identical case, the CESTAT, Hyderabad in the case of WS Industries (India) Ltd. cited supra has also condoned delay of

approximately 3 years in filing the refund claim by relying upon the previous decisions of the Tribunal taking a liberal view in condoning the delay in

case of SEZ. The Tribunal in the above case in para 7 & 8 has held as under:-

7. I have considered the decisions relied upon by both sides. I find that in similar cases with respect to Exemption Notification No.

[17/2011] available to SEZ developers, this Bench had taken a liberal view and condoned the delay as was available under the Exemption

Notification. The decisions relied upon by the Learned AR pertain to claim of refund under Section 11B of the Central Excise Act and

Section 27 of the Customs Act read with Notification No. 102/2007 (SAD refund) which do not provide for any condonation of delay. In

respect of such refund claims, the statutory time limit has to be adhered to and once the refund claim is hit by limitation, no refund claim

could be sanctioned.

8. In this factual matrix, considering the situation of the appellant during the relevant period as explained by the Learned Counsel, I

condone the delay in filing the refund claim and direct the original authority to sanction refund claim to the extent admissible on merits. The

appeal is allowed as above.

7. The issue is squarely covered by the appellantâ??s own case for the previous period as well as the decision of the Tribunal at Hyderabad and

hence by following the ratio of the said decisions, I am of the considered view that the impugned order rejecting the refund claim on time bar is not

sustainable in law and therefore I set aside the same by allowing the appeal of the appellant and remand the case back to the original authority for

deciding the refund claim on merit. The original authority is directed to decide the matter within a period of three months after receipt of a certified copy of this order.

(Order was pronounced in Open Court on 15/06/2021)

