IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Service Tax Appeal No. 41300 of 2019

(Arising out of Order-in-Appeal No.143/2019 (CTA-I) dt. 02.05.2019 passed by the Commissioner of GST & Central Excise (Appeals-I), Chennai)

M/s.Zamil Steel Engineering India Pvt. Limited **Appellant**
Kochar Technology Park, Door No.SP 31A,
1st Cross Road,
Ambattur Industrial Estate, Ambattur,
Chennai 600 058.

Vs.

Commissioner of CGST & Central Excise **Respondent**
Purasavalkam Division,
Chennai North Commissionerate
No.2045-I, Newry Towers,
2nd Avenue, Anna Nagar,
Chennai 600 040

APPEARANCE:

Shri R. Balagopal, Consultant For the Appellant
Ms. T. Usha Devi, DC (AR) For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. 40077/2020

Date of Hearing: 23.01.2020
Date of Decision: 23.01.2020

The brief facts of the case are that appellants were registered with the service tax department under Information Technology Software Services and were also engaged in the business of providing Consulting Engineering Service. They filed a refund claim of

Rs.6,42,299/- on 18.4.2018 being the unutilized cenvat credit on services consumed in the export of services during the period from April 2017 to June 2017. A show cause notice dt. 30.08.2018 was issued to the appellant proposing to reject the claim for the reasons that on perusal of ST-3 returns for the relevant period, the appellant has not debited the amount claimed as refund in their cenvat credit account; Secondly that they have carried forward the balance cenvat account to TRAN-1 GST Regime as on 30.6.2017; that in terms of Section 142 (4) of CGST Act,2017, the refund claim is not admissible. After due process of law, the original authority rejected the refund claim against which an appeal was filed before the Commissioner (Appeals). Vide the impugned order herein, the Commissioner (Appeals) upheld the order of rejection. Hence this appeal.

2. On behalf of the appellant, Ld.Consultant Shri R.Balagopal appeared and argued the matter. He submitted that the issue is with regard to rejection of refund claim of Rs.6,42,299/-. Appellants are confining the claim of refund amount only to Rs.5,80,066/-. Refund claim of CESS amount of Rs.62,233/- is not eligible and hence not claimed. He submitted that the appellants are engaged only in export of services. They are not able to utilize cenvat credit availed for providing export services and therefore had filed a refund claim under Rule 5 of CCR 2004. The input services were availed prior to30.6.2017 (that prior to GST regime); However, the refund claim was filed on 22.03.2018 after introduction of GST. At the time of filing the refund claim, there was no ST return required to be filed

and hence they could not debit the refund amount as required under condition 2 (h) of the Notification No.27/2012-CE (NT). They had carried forward the amount of unutilied credit to TRAN-1 and then filed refund claim. They also filed TRAN-3 returns reflecting the amount as debited from TRAN-1 account. The refund claim was rejected stating that as per Section 142 (4) of CGST Act, 2017, no refund can be allowed when the balance amount has been carried forward from CENVAT account. The Ld.consultant explained that during the period when the refund claim was filed, there was no existence of portal for the appellant to file ST-3 returns. Since it was not possible for the appellant to file ST-3 returns showing the debit of the refund amount, they carried forward the refund amount o the GST TRAN-1 and thereafter filed refund claim. The department does not have a case that the appellant is not eligible for the credit. However the same is only rejected by technical reasons stating that appellant has carried forward the credit and therefore not eligible for refund. It is also submitted that they debited the amount claimed as refund in the input ledger in June 2018 reflecting the same in the GST TRAN-3. Therefore the credit amount of which refund is claimed gets nullified. He relied upon the Tribunal decisions in the case of *Global Analytical India Pvt. Ltd. Vs CGST & CE Chennai* vide Final Order No.40942-40943/2019 dt. 22.07.2019 and M/s.*Fine Automotive and Industrial Radiators Pvt.Ltd. Vs CGST & CE, Puducherry* vide Final Order No.41396/2019 dt. 20.11.2019.

3. Ld. A.R Ms.T. Usha Devi appeared on behalf of the department. She adverted to Circular No.58/32/2018-GST dt.4.9.2018 and explained that said circular referred to by the Tribunal in the final order relied upon by the advocate is not applicable to the said set of facts. The said circular gives clarification for recovery of arrears of wrongly availed cenvat credit and it does not deal with refund of wrongly carried forward transitional credit. It is submitted by her that appellant has carried forward credit to TRAN-1 GST and therefore as per Section 142 (4) of GST Act, 2017, they are not eligible for refund. It is further submitted by her that credit availed by the appellant though prior to 30.06.2017 they were given enough time to avail refund of the transitional credit. Though time for filing refund of such transitional credit was given to the appellants they have filed claim only on 30.06.2018. It is argued by her that debit as per para 2(h) of Notification No.27/2012 ought to have been done prior to filing the refund claim when Finance Act, 1994 was in existence. Therefore, for these reasons also appellant cannot be granted refund.

4. Heard both sides.

5. The appellant is aggrieved by the rejection of refund for the reason that unutilized cenvat credit has been carried forward to TRAN-1 GST. It is brought out from the facts that though the credit was availed prior to introduction of GST the refund claim was filed by them only on 22.03.2018. The requirement to debit the refund

amount as under para 2 (h) of the notification can be applied only when the assessee is required to file ST-3 returns. After introduction of GST, it is not possible for the assessee to file ST-3 returns. It is not required for the appellant to deduct the amount in the ST-3 returns as and when credit is availed. Only if they intend to file refund claim they are required to debit the same. Therefore the contention of Ld. A.R that assessee ought to have debited the amount during the existence of Finance Act, 1994 itself cannot have substance. After taking note of the facts, I find that the said issue is covered by the decision of the Tribunal in the cases relied by Ld. Consultant for appellant. In the case of *Global Analytical India Pvt. Ltd. Vs CGST & CE Chennai* the Tribunal observed as under :

> "6. I have considered the rival contentions and have gone through the relevant provisions of law and also various orders referred to during the course of arguments.
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> 7.1 It is an undisputed fact that the appellant did not reverse the equal amount as required by the condition at paragraph 2(h) of Notification No. 27/2012 (supra). But the fact also remains that there was no provision in the ACES system to debit the value of refund and also the fact that the entire credit which was carried forward in TRAN-1 stood reversed by the appellant voluntarily in its GSTR-3B filed for the month of April 2018.
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> 7.2 The above facts, according to me, are sufficient compliances with the condition at paragraph 2(h) since post G.S.T., the scenario is different than the one prevailing prior to G.S.T. regime. Otherwise, it would become an impossible task for an assessee, more so when the filing of ST-3 returns itself was done away with."

Same view was taken in the case of *Fine Automotive and Industrial Radiators Pvt.Ltd. Vs CGST & CE, Puducherry* (supra). By judicial discipline, I am bound to follow the decision of the

Single Member Bench of the Tribunal, the impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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