

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 85691 of 2019

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-526/2018-19 dated 18.12.2018 passed by the Commissioner of Central Tax (Appeals-I), Pune.)

**M/s Brose India Automotive
Systems Pvt. Ltd.
202, 2nd Floor Panchshil Tech Park,
S. No. 19/20, Hinjewadi, Pune,
Maharashtra – 411 057**

.....Appellant

VERSUS

**Commissioner of CGST &
Central Excise, Pune-I
41-A, ICE House, Sassoon Road,
Opp.- Wadia College, Pune,
Maharashtra – 411 001**

.....Respondent

APPEARANCE:

Shri S. Narayanan, Advocate for the Appellant
Shri Dilip M. Shinde, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85430/2022

Date of Hearing: 23.03.2022

Date of Decision: 05.05.2022

Denial to avail CENVAT credit on Service Tax paid during GST regime under Reverse Charge Mechanism on import of services by the Appellant manufacturing company and its confirmation by the

Commissioner of Central Tax (Appeals-I), Pune vide above referred order is assailed in this appeal.

2. Factual backdrop of the case, in brief, is that Appellant is undisputedly covered under Rule 7 of Point of Taxation Rules, 2011, i.e. meant for "associated enterprises" and it was required to pay service tax under Reverse Charge Mechanism in terms of the provisions of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as "receiver of service" from the date of debit in the books of account as "receiver of service" or from the date of making payment, whichever is earlier. Appellant-manufacturer made the final booking in terms of provision of Service Tax during the finalisation of its balance sheet on 30.11.2017 and 31.12.2017 for the period ending on 31.03.2017 and on June, 2017 against which Service Tax of Rs.9,01,368/- and Rs.9,42,054/- were paid respectively alongwith interest in the month of November, 2017 and January, 2018. Refund application was filed on 27.03.2011 within the limitation period of one year in terms of Section 11B of Central Excise Act, 1944 seeking refund of Service Tax, as after the onset of GST regime w.e.f. 01.07.2017, it could not avail the credit and sought cash refund by invoking protection granted under Section 174 and 142 of the CGST Act, 2017. Learned adjudicating authority rejected the refund application on the ground that GST was payable on the recorded transactions since final booking was made in the books of account on 30.11.2017 and 31.12.2017 though service had been rendered during pre GST

regime i.e. prior to July, 2017. Appellant's plea before the Commissioner (Appeals), challenging the said order of rejection of refund, yielded no fruitful result for which appellant preferred this appeal before this forum.

3. During the course of hearing of the appeal learned Counsel for the appellant Shri S. Narayanan, with reference to the provision contain in Section 143(3), 142(6)(a), 142(5) and Section 174 of CGST Act *vis-a-vis* judicial decisions rendered by four different Benches of this Tribunal in the case of *M/s. NSSL Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Nagpur [2021-TIOL-469-CESTAT-MUM, M/s Terex India Pvt. Ltd Vs. The Commissioner Of GST And Central Excise [2021-TIOL-696-CESTAT-MAD], M/s Circor Flow Technologies India Pvt. Ltd Vs. The Principal Commissioner Of GST and Central Excise – Coimbatore – 641018-Service Tax Appeal No. 40597 of 2020, M/s Jagannath Polymers Pvt. Ltd. Vs. Commissioner of CGST, Jaipur-1 [2022-TIOL-66 CESTAT-DEL], Flexi Caps And Polymers Pvt. Ltd. Vs Commissioner of CGST and Central Excise, Indore- [2021-TIOL-611-CESTAT-DEL], Rawalwasia Ispat Udyog Pvt. Ltd. Vs. Commissioner of Central Excise, Panchkula-[2019 (26) G.S.T.L. 196 (Tri. – Chan.)]* submitted that the claim filed by the Appellant merits consideration and Appellant was eligible to avail credit of Service Tax paid as input services were used for manufacturing activity. Since carrying forward of CENVAT credit to GST regime had expired on 27.12.2017 and there was no other alternative except to get the CENVAT credit in cash as contemplated

under Section 142(3) of the CGST Act Appellant found no other alternative except invoking the jurisdiction of this Tribunal for appropriate remedy.

4. Per contra, learned Authorised Representative for the Respondent-Department Mr. Dilip M. Shinde, while supporting the reasoning and rationality of the order passed by the learned Commissioner (Appeals), also raised strong objection to the jurisdiction of CESTAT in scrutinising the legality of the order passed by the Commissioner (Appeals) under Section 107 to 109 of the GST Act in exercise of Section 142 of the said Act, since appeal against such an order can only be maintainable under Section 112 of the CGST Act before the CGST Tribunal, which is yet to be constituted. In citing CESTAT order reported in *2020 (41) GSTL 323 (Tri.-Hyd.)* in the case of *Aditya Steel Rolling Mills Pvt. Ltd. Vs. CCT, Visakhapatnam-GST* wherein it was held that decision pertaining to transitional provisions being decisions under CGST Act which officers are fully competent to deal with but not the Tribunal that is competent to decide such appeals, it is the GST Appellate Tribunal which can hear appeals against such decisions, for which he seeks no indulgence of CESTAT in the appeal preferred by the present Appellant.

5. I have gone through the submissions, judicial decisions, relevant provisions of law guiding the issue and the case record. It is noteworthy to mention here that Section 142(3) clearly stipulated

that refund of any amount of CENVAT credit, duty etc. paid under the existing law (means the law prevailing then i.e. Central Excise Act) shall be dealt in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash. The issue before this Tribunal is to scrutinise as to if only existing law would govern the refund or else the procedure available under existing law for ultimate redressal /disposal of the refund application would extend to the Appellate stage available in the existing law too. The decisions cited by the learned Counsel for the appellant referred above clearly indicates that Tribunal setup under the existing law namely CESTAT had dealt and disposed of such dispute while the decisions cited by learned Authorised Representative in *Aditya Steel Rolling Mills Pvt. Ltd.* (supra) states that GST Appellate Tribunal is to hear such appeal against decisions of the adjudicating authority namely the officers of the GST. The Circular No. 132/2/2020-GST dated 18.03.2020 by CBEC clarified that the Central Goods and Service Tax (ninth removal of difficulties) order 2019 dated 03.12.2019 provides that within 3 months of the President of GST Tribunal entering office, appeals can be filed when no such Tribunal is formed and in case of existence of such GST Tribunal it is to be filed within 3 months of communication of the order. Be that as it may, our concern is to scrutinise the jurisdictional issue and the suggestions offered by the learned Counsel for the appellant that when the Tribunal had given divergent views, the matter should be referred to the President for constitution of a Larger Bench to settle the issue. I do not agree with his views in view of the fact that sub-

Section 6(a) of Section 142 of CGST Act and sub-Section 2(f) of Section 174 dealing with Repeal and saving Clauses have covered such issue and the same provision i.e. Section 174 2(f) has not been dealt in any of those referred judgments. Section 146(6)(a) reads:-

"6(a) every proceeding of appeal, review of reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

(Underlined to emphasis)

Now the question comes, if such a provision can still remain valid after GST statute is brought into force through an official gazette notification. Answer is available under the saving Clause 2(f) of Section 174 that reads:

"(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

- (a) ...*
- (b) ...*
- (c) ...*
- (d) ...*
- (e) ...*

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not

come into force and the said Acts had not been amended or repealed."

(Also underlined to emphasis)

6. The above provision would clearly reveal that any proceeding including an appeal if filed after the appointed day under the Repealed Act also, the same shall be continued under the said Act as if GST Act has not come into force and the previous Act has not been amended or Repealed.

7. In view of operation of the saving Clause describe above, I am of the firm opinion that this appeal is maintainable before the CESTAT and this Bench is competent to decide the issue of refund of CENVAT credit as such an order has been passed in accordance with the existing law and not under the GST Act. Its rejection by the Commissioner (Appeals) solely on the ground that GST was payable and no evidence of payment of GST was available is also not tenable and is erroneous to the extent that under GST Act recovery provisions are also available which can be resorted to by the competent authority instead of making a pre-condition of payment of GST to facilitate the refund process that was instituted under the erstwhile Central Excise Act in borrowing force from the new GST Act itself. That apart, the forwarding memo of the Order-in-Original reveals that appeal under Section 85 of the Finance Act, 1994 shall be maintainable and Order-in-Appeal forwarding memo also reveals that appeal lies to CESTAT under Section 35B of the Central Excise

Act, 1944 / Section 86(1) of Chapter-V of the Finance Act, 1994.

Hence the order.

ORDER

8. The appeal is allowed and the order passed by the Commissioner of Central Tax (Appeals-I), Pune vide Order-in-Appeal No. PUN-EXCUS-001-APP-526/2018-19 dated 18.12.2018 is hereby set aside. Appellant is entitled to get refund of CENVAT credits against which payment of Service Tax was made during the GST regime and accepted by the Respondent-Department. The Respondent-Department is directed to pay the refund amount of Rs.18,43,422/- alongwith applicable interest within three months of receipt of this order.

(Order pronounced in the open court on 05.05.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad