

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

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86576 of 2019

(Arising out of Order-in-Appeal No. MKK/457-460/RGD APP/2018-19 dated 31.01.2019 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh.)

**M/s Cogitate Technology
Solutions Pvt. Ltd.
1104 & 1105, 11th Floor,
Rupa Solitaire, Sector I,
MBP, Mhape,
Navi Mumbai-400710**

.....Appellant

VERSUS

**Commissioner of CGST and
Central Excise, Belapur
CGO Complex, 10, CBD Belapur,
Navi Mumbai-400614**

.....Respondent

WITH

(i) Service Tax Appeal No. 86577/2019 (M/s Cogitate Technology Solutions Private Limited); (ii) Service Tax Appeal No. 86578/2019 (M/s Cogitate Technology Solutions Private Limited); (iii) Service Tax Appeal No. 86579/2019 (M/s Cogitate Technology Solutions Private Limited)

(Arising out of Order-in-Appeal No. MKK/457-460/RGD APP/2018-19 dated 31.01.2019 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh)

APPEARANCE:

Shri Keval Shah, Chartered Accountant for the Appellant
Shri Saikrishna Hatangadi, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 85699-85702/2022

Date of Hearing: 21.06.2022

Date of Decision: 12.08.2022

Rejection of refund claimed under Notification No. 27/2012-CE (NT) dated 18.06.2012 to the tune of Rs. 1,01,841/-, Rs.1,44,215/-, Rs.1,51,869/- and Rs.1,50,650/- respectively for 4 quarters from January, 2016 to December, 2016 against unutilised CENVAT Credits accumulated on account of export of services on the sole grounds of expiry of the period of limitation of one year, counted from the date of realisation of export proceeds, is assailed in these four appeals.

2. I have heard submissions from the both sides and perused the case record. During the course of argument learned Counsel for the Appellant Shri Keval Shah argued that Larger Bench of this Tribunal in *Commissioner of Service Tax, Bengaluru Vs. Span Infotech (India) Pvt. Ltd. Reported in 2018 (12) GSTL 200 (Tri.- LB)* had clearly held that the period of limitation of one year would start only after the commencement of the quarter and continue till the end of the quarter and not from the date of receipt of FIRC (realisation of export proceeds) alone, as in Notification No. 27/2012-CE (NT) it was clearly stipulated under para 2 that only one claim of refund on each quarter is allowed to be filed for every quarter. Per contra, learned Authorised Representative for the Respondent-Department submitted that such a legal provision had undergone a change after the amended Notification No. 14/2016-CE (NT) dated 01.03.2016 came

into existence that had explained in clear and unequivocal language that date of receipt of payment in convertible exchange would be taken for the purpose of counting of the period of one year if provision of export service was already completed and therefore, with due consideration of the refund applications, only part of the refund was disallowed which had exceeded the one year time period.

3. In the given factual scenario, it is imperative to have a look at the reasoning of the order passed by the Commissioner (Appeals) and scrutinise the same with respect to the amended provision as well as the decision of Larger Bench of this Tribunal referred above. As could be noticed from para 6.3 of the Order-in-Appeal, the learned Commissioner (Appeals) had placed complete reliance on the judgment of Hon'ble Andhra Pradesh High Court passed in the case of *Hundai Motor India Engg. (P) Ltd. reported in 2015 (39) STR 984 (A.P.)* and refused to acknowledge the ratio of the Larger Bench judgement in the case of *Span Infotech (India) Pvt. Ltd. cited supra*. Despite the fact that in the case of *Atma Steels Pvt. Ltd. & others* reported in *RLT (LB CEGAT)-87*, a 5 Members Bench of this Tribunal had made an observation as to why National Tribunal of this nature should take independent decision and follow it as judicial precedent in the event of divergent opinions are made by different High Court. Learned Commissioner (Appeals) had also ignored the fact that the judgment of *Hundai Motor India Engg. (P) Ltd. (supra)* was also referred in *Span Infotech (India) Pvt. Ltd.* order of the Larger Bench. Be that as it may, in *Span Infotech (India) Pvt. Ltd. (supra)* the

amended clause B of para 3 of Notification No. 27/2012-CE (NT) was also dealt with and a finding was made to the effect that such an amendment can have prospective effect and the relevant date for the purpose of deciding the time limit for consideration of refund claim under Rule, 5 of CENVAT Credit Rules, 2004 may be taken as the end of the quarter in which FIRC is received, in case where refund claims are filed on a quarterly basis. This finding is also further elaborated in the order of *M/s. Syngenta Services Pvt. Ltd.* passed on 02.01.2020 in the Service Tax Appeal No. 85057/2019 of CESTAT Mumbai, the relevant paragraph of which is reproduced below:-

*"5. Heard submissions from both the sides and perused the case record. The only logic that can be put forth in this case is that appellant had plenty of scope to seek refund of the disputed amount before the quarter ending December, 2017 in order to cover its claim within the period of limitation. But the same logic would not sustain primarily on two grounds. First, there is no evidence on record that any refund claim was made for the previous quarter in which FIRC dated 17.01.2017 would have been included. Second and the most significant reason to negativate such logic is that the rule provided appellant to file refund claim within one year and going by the reason cited by the respondent-department, the same would expire on 16.01.2017 but it is paradoxical to the provision contained in Clause 2 of Board's Notification No. 27/2012-CE (NT) that authorised a claimant to file only one refund application in one quarter. This would extinguish the right of filing refund claim within one year by squeezing it further by atleast 16 days. I am, therefore, of the considered view that findings of the Larger Bench of the Tribunal in *Span Infotech Pvt. Ltd.* (supra) that the limitation period would expire at the end of the quarter remains unaltered even after the amended Notification No. 14/2016-CE (NT) dated 01.03.2016 has come in to force."*

4. In view of the judicial precedent set by this Tribunal the following order is passed.

ORDER

5. All these four appeals are allowed and the order passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh vide Order-in-Appeal No. MKK/457-460/RGD APP/2018-19 dated 31.01.2019 to the extent of denial of a part of refund claims for all 4 quarters is hereby set aside. The Appellant is entitled to get refund amount of Rs.1,01,841/-, Rs.1,44,215/-, Rs.1,51,869/- and Rs.1,50,650/- respectively as prayed in all these appeals with applicable interest and the Respondent-Department is directed to pay the same within 2 months of communication of this order.

(Order pronounced in the open court on 12.08.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad