CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

Service Tax Appeal No. 87237 of 2019

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/08/2019-20 dated 24.04.2019 passed by the Commissioner (Appeals)-III, GST & Central Excise, Mumbai).

Course 5 Intelligence Private Limited.
Unit No. 302, 3rd Floor, Bldg. No.3,
Mindspace-SEZ, Thane, Belapur Road,
Airoli, Nav Mumbai-400708. .....Appellant

VERSUS

Commissioner, CGST, Mumbai East .....Respondent
9th Floor, Lotus Infocentre, Near Parel Station,
Parel East,
Mumbai-400012.

APPEARANCE:

Shri Parth Shah, Chartered Accountant for the Appellant
Shri Prabhakar Sharma, Superintendent Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86229/2022

Date of Hearing: 15.12.2022
Date of Decision: 22.12.2022

PER: AJAY SHARMA

This appeal has been filed assailing the order dated 24/04/2019 passed by Commissioner (Appeals)-III GST & Central Excise, Mumbai by which the learned Commissioner rejected the appeal filed by the appellant.

2. The issue involved herein is whether the authorities below are justified in rejecting the refund claim filed by the appellant under Rule(5) of Cenvat Credit Rule, 2004 read with Notification

No. 27/2012 – CE(NT) dated 18/06/2012 on the ground of non-disclosure of availment of Cenvat Credit in ST-3 Returns?

3. The facts in brief leading to the filing of instant appeal are stated as follows. The appellant are holding Service Tax registration under the category *"Market Research Agency Services".* On 30/03/2017 they filed a refund claim amounting to Rs.13,31,503/- under Rule(5)ibid r/w Notification No. 27/2012 which was accumulated during the period from April, 2016 to June, 2016. Subsequent to filing of refund claims, the appellants realized their mistake in ST-3 return filed for the period April, 2016 to September, 2016, wherein they had inadvertedly failed to disclose the amount of credit availed by them. Accordingly, vide letter dated 15/06/2017 they intimated the said discrepancy to the concerned Assistant Commissioner before whom the refund claim was filed with a request to accept the rectified ST-3 return manually for the said period, but the said request was rejected and conveyed to the appellants by the department vide letter dated 16/06/2017. The Adjudicating Authority vide Order-in-Original dated 21/06/2017 rejected the refund claim on the ground that as per ST-3 return filed by the appellants, the appellants failed to disclose availment of any Cenvat Credit during the period April, 2016 to September, 2016, which is not in accordance with the conditions laid down in Notification *(supra)* r/w Cenvat Credit Rules, 2004. The appeal filed by the appellant before the 1st Appellate Authority was rejected vide impugned order dated 24/04/2019.

4. Learned Counsel for the appellant submits that the refund claim has been rejected without issuing any show cause notice to that effect and therefore there is violation of principle of natural justice. He further submits that mere failure to disclose the availments of credit in ST-3 returns does not amount to non-compliance of the conditions prescribed in Notification *(supra)* and therefore the authorities below erred in rejecting the refund claim on that ground. In support of his submission learned Counsel for

the appellant placed reliance on the following decisions of this Tribunal in the matters of :-

(i) *Origin Learning Solutions Pvt. Ltd v/s Commissioner; 2021-TIOL-417-Cestat-Mad.*

(ii) Target Co-orporation Pvt. Ltd v/s Commissioner; 2019-TIOL-3635-Cestat-Bang.

(iii) Citizen Co-operative Bank Ltd. v/s Commissioner; 2017 (50) STR 110 (Tri-All.)

(iv) *VOSS Exotech Automotives Pvt. Ltd. v/s Commissioner; 2018 (363) ELT 1141-(Tri-Bom.)*

(v) *Mccormick Support Services Pvt. Ltd v/s CCE & ST 2018 (364) ELT 985 (Tri-Chan.)*

Per contra Learned Authorised Representative appearing on behalf of Revenue re-iterated the findings recorded in the impugned order and placed reliance on the decision of this Tribunal in the matter of *Everyday Health (India) Pvt. Ltd. v/s Commissioner, CGST & Central Excise, Mumbai (East); 2019 (370) ELT 846 (Tri-Mum.).*

5. I have heard Learned Counsel for the appellant and Learned Authorised Representative appearing on behalf of Revenue and perused the case records including the case laws submitted during the course of hearing. Time and again in series of decisions this Tribunal has repeatedly held that non-mentioning of the credit availed in ST-3 return is only a procedural lapse for which the substantial relief cannot be denied to the assessee but despite that the lower authorities seem to be adamant in not taking cognizance of the views of the Tribunal. In the instant matter, when the appellant realized their mistake they immediately, vide letter dated 16/06/2017, intimated the said mistake / discrepancy to the authority before whom the refund claim was filed by them and requested the said authority to accept the duly corrected/ rectified ST-3 returns manually for the period April, 2016 to September, 2016 but the said authority vide letter dated 16/06/2017 turned down the said request and rejected the refund

claim merely on the basis of non-disclosing the availment of credit in ST-3 returns. Learned Commissioner also followed the same without applying his independent mind to the issue and without looking into the settled legal position as laid down by this Tribunal in number of decisions. From the impugned order it seems that although the learned Commissioner agreed with the submission of the appellant about violation of principle of natural justice but according to him since he has heard the appellant therefore natural justice has been restored, which in my view is not correct understanding of the law on aforesaid principle. The case laws as cited by learned Authorised Representative in the matter of *M/s. Everyday Health (supra)* is somehow similar with the facts of the present case in which this Tribunal after setting aside the impugned order therein remanded the matter back to the Original Authority for deciding the issue afresh in line with the observations made in the said order. The relevant paragraphs of the aforesaid order are reproduced hereunder :-

> "xxx xxx xxx
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> *5.* Heard both sides and perused the case records.
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> 6. The fact is not under dispute that the appellant is a service provider and provided the entire output service to the overseas entities. Thus, the accumulated Cenvat credit balance available in the books should be available to the appellant as refund under Rule 5 of the Cenvat Credit Rules, 2004. Howevever, the refund claim applications filed by the appellant were denied by the original authority on the ground that the ST-3 returns filed for the relevant period not reflected the available credit balance therein. Since the appellant claimed that revised returns were filed manually and the same were available with the department for necessary verification, I am of the view that the matter should be remanded to the original authority for verification of ST-3 returns manually filed by the appellant and the input service invoices, based on which credit was availed by the appellant. If the records maintained by the appellant demonstrate that the input services were used/utilized for export of service, the refund

benefit should be extended by the original authority under Rule 5 of the Rules.

7. In view of the above, after setting aside the impugned order, the matter is remanded to the original authority for deciding the issue afresh, in line with the above observations. Needless to say that opportunity should be granted to the appellant before deciding the issue afresh.

8. In the result, appeals are allowed by way of remand."

In the instant matter, the mistake committed by the appellant is merely a procedural lapse which they tried to rectify immediately thereafter but were not permitted and substantial relief was denied to them, which is not permissible in law. Admittedly the ST-3 Returns manually filed by the Appellants were not verified as the same were not accepted by the authority below. In view of the discussions made hereinabove, I am of the considered view that justice demands that the impugned order be set aside and the matter be remanded to the Original Authority for deciding the issued afresh after verification of ST-3 returns filed by the appellant manually.

6. Accordingly, the appeal is allowed and the matter is remanded to the Original Authority in order to decide the issue afresh in accordance with the observation made hereinabove. It is needless to mention that while deciding the matter the authority concerned shall follow the principle of natural justice and grant proper opportunity of hearing to the appellant.

(Pronounced in open Court on 22.12.2022)

(Ajay Sharma)
Member (Judicial)

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