IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40813 of 2018

(Arising out of Order-in-Appeal No. 488/2017 (CTA-I) dated 29.12.2017 passed by the Commissioner of G.S.T. and Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Dhyan Networks and Technologies Pvt. Ltd. **: Appellant**
455, 6th Floor, Anna Salai,
Teynampet, Chennai – 600 018

VERSUS

The Commissioner of G.S.T. and Central Excise **: Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034

APPEARANCE:

Shri T.R. Ramesh, Advocate for the Appellant

Shri M. Ambe, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40350 / 2022

DATE OF HEARING: 08.09.2022

DATE OF DECISION: 27.10.2022

Order :

Brief facts are that the appellants are engaged in providing Business Support Services to their foreign clients and are also registered with the Department. They filed a refund claim for Rs.6,28,141/- for the period from July 2014 to September 2014 under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-C.E (N.T.) dated 18.06.2012.

2. After due process of law, the Original Authority vide Order-in-Original No. 103/2016(R) dated 11.08.2016 sanctioned the refund of Rs.3,34,714/- to the appellant. The refund of Rs.2,93,427/- was not sanctioned to the appellant, but however, it was held that the appellant could take re-credit of the same in view of paragraph 2(i) of Notification No. 27/2012. Aggrieved by the partial rejection of refund of Rs.2,93,427/- in cash, the appellant filed appeal before the Commissioner (Appeals), who vide order impugned herein upheld the order passed by the Original Authority. Hence, this appeal.

3.1 On behalf of the appellant, Shri T.R. Ramesh, Learned Counsel, appeared and argued the matter. He submitted that the appellant had initially filed refund claim for a sum of Rs.1,20,468/- and Rs.1,72,959/- (totalling Rs.2,93,427/-) pertaining to the periods from April to June 2013 and July to September 2013 respectively. These refund claims were subsequently withdrawn by the appellant and they took re-credit during the quarter July 2014 to September 2014. Thereafter, the appellant had opted to file refund claim of this amount also and thereby made debit of this amount in its CENVAT account as required under the Notification. It is submitted by him that the authorities below have taken an erroneous view that as the appellant has taken re-credit of this amount, it cannot be considered as credit taken during the refund period; the refund of the said amount was not allowed to the appellant and instead, the appellant has been directed to take re-credit of the same.

3.2 He submitted that the authorities below have thoroughly failed to appreciate that Rule 5(1)(B) of the CENVAT Credit Rules, 2004 defines “Net CENVAT credit” as the credit availed during the relevant period. He argued that when it is not in dispute that the appellant has availed the credit of Rs.2,93,427/- during the quarter covering the relevant refund period, the appellant ought to have been given refund of this unutilized CENVAT Credit; the refund

has been rejected on an erroneous assumption that Rule 5(1)(B) covers only the credit availed by the appellant in the normal course and not the re-credit that has been taken. He submitted that the credit availed and the re-credit taken has been artificially differentiated by rejecting the refund of the amount which was taken as re-credit.

3.3 It is pointed out by the Learned Counsel for the appellant that both the authorities below have allowed the appellant to take re-credit and have denied the cash refund. The order passed by the Adjudicating Authority allowing the appellant to take re-credit is dated 11.08.2016; the appellant had preferred an appeal before the Commissioner (Appeals) who upheld the view that the appellant ought to take re-credit and that therefore, the rejection of refund did not require interference. The said impugned order was passed on 29.12.2017, which is after the introduction of G.S.T. He submitted that since the matter was under litigation, the appellant could not take re-credit as directed in these orders. That the said relief granted to the appellant to avail re-credit is of no practical use after the introduction of G.S.T. as there is no CENVAT account in existence at present.

3.4 The Learned Counsel for the appellant relied upon the decision of the Tribunal in the case of *M/s. Veer-o Metals Pvt. Ltd. v. Commr. of C.T., Bengaluru South Commissionerate [2021 (51) G.S.T.L. 315 (Tribunal – Bangalore)]* to argue that in a similar situation, the Tribunal had held that after the introduction of G.S.T., the appellant is entitled to cash refund as per sub-section (3) and sub-section (6)(a) of Section 142 of the C.G.S.T. Act.

3.5 He prayed that the refund may be sanctioned in cash as it is not practical for the appellant to take re-credit after the introduction of G.S.T.

4. The Learned Authorized Representative for the respondent, Shri M. Ambe, supported the findings in the impugned order.

5. Heard both sides.

6. From the facts narrated above, it can be seen that the grievance of the appellant is that the amount of Rs.2,93,427/- was not sanctioned to the appellant in cash and instead, was directed to take re-credit of the said amount. Whatever the reasons may be for rejection of cash refund, it has to be seen that after the introduction of G.S.T., the said direction to take re-credit has become impractical for the appellant. The Tribunal in the case of *M/s. Veer-o Metals Pvt. Ltd*. (supra) had considered a situation as to whether refund in cash can be allowed when credit cannot be availed by the assessee. The relevant paragraphs are noted as under:-

> *"5.1 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. He further submitted that there is no dispute about the fact that the appellants are 100% EOU and holders of a valid letter of permission issued by the Development Commissioner. He further submitted that the conclusion arrived by the original authority that appellant had not physically exported their goods but cleared the same to another EOU which is not equivalent to physical export. He further submitted that the main ground taken by the lower authorities for rejection of the cash refund is that insertion of clause (1A) in Explanation to Rule 5 of Cenvat Credit Rules effective from 1-3-2015 that "export goods" means any goods which are to be taken out of India to a place outside India and that in the present case, the appellant had not exported the goods but had cleared the goods to another EOU and hence they are not entitled to cash refund. He further submitted that the issue as to whether the cash refund of unutilized Cenvat credit in respect of clearances made to EOU on IUT basis is admissible or not is no more res integra and is covered by the decision of the Bangalore CESTAT in the case of Wave Mechanics Pvt. Ltd. v. CCT, Bangalore [2019 (370) E.L.T. 291 (Tri. - Bang.)] wherein it was inter alia held that cash refund is not admissible under Rule 5 of CCR read with Notification No. 27/2012-C.E., dated 18-6-2012 in respect of clearances made by one EOU to another on IUT basis. It was also held in the said case that the amounts in respect of which cash refund had been claimed by the said appellant were debited in the Cenvat credit at the time of filing the refund claim as required by the then Notification No. 27/2012-C.E., dated 18-6-2012 and hence the appellant was entitled to take*

re-credit of the Cenvat credit for which the claims were filed. He further submitted that in the present case while claiming cash refund, the present appellants had already debited the entire Cenvat credit in respect of which the claims had been filed as required under the then Notification No. 27/2012-C.E., dated 18-6-2012 and the said fact is clearly recorded in each of the OIO passed by the Deputy Commissioner. He further submitted that the following amounts were lying in balance at the time the Goods and Services Tax regime came to be implemented w.e.f. 1-7-2017.

Sl. No.	*Period*	*Amount in dispute and subject matter of the present appeals*
1	*Jan., 2015 to March, 2015*	*Rs. 2,94,261/-*
2	*Apr., 2015 to June, 2015*	*Rs. 12,98,055/-*
3	*July, 2015 to September, 2015*	*Rs. 11,78,569/-*

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8. Further I find that this Tribunal in the case of Wave Mechanics Pvt. Ltd. [2019 (370) E.L.T. 291 (Tribunal)] cited supra has held that cash refund is not admissible under Rule 5 of Cenvat Credit Rules read with Notification No. 27/2012-C.E., dated 18-6-2012 in respect of clearances made by one EOU to another EOU on IUT basis. It was also held that the amounts in respect of cash refund has been claimed were debited in the Cenvat credit account at the time of filing the refund claim as required under the said notification and the appellant was entitled to take recredit of the Cenvat credit. Further after going through the sub-section (3) of Section 142 of CGST Act, I find that as per the said sub-section, every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid 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. Further it is very clear that as per sub-section (6)(a) of Section 142, every proceeding of appeal, review or 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. Further I find that the appellant had already debited the entire amount in their Cenvat account and the said amount was debited under a bona fide belief that the cash refund would be sanctioned to them and the very fact that Cenvat credit was never disallowed, hence the Cenvat credit lying in the balance of Cenvat account are liable to be refunded in cash to the appellant as per the provisions of sub-section (3) or sub-section (6)(a) of Section 142 of CGST Act. This issue is no more res integra and has been held in favour of the appellant by various decisions cited supra. Hence, by following the ratio of the said decisions, I am of the considered view that the impugned order denying the cash refund is not sustainable in law and the appellant is entitled to cash refund as per sub-section (3) and sub-section (6)(a) of Section 142 of CGST Act. All the three appeals are accordingly allowed."

7. As the appellant has been allowed to take re-credit and is not able to do the same due to the introduction of G.S.T., I am of the view that he has to be given refund of the said amount in cash. From the discussions made above and also following the decision as cited above, I am of the view that the appellant is eligible for refund of the amount of Rs.2,93,427/-.

8. The impugned order is set aside.

9. The appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **27.10.2022**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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