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

Service Tax Appeal Nos.40409 to 40413 of 2022

(Arising out of Orders-in-Appeal No. 161 to 165/2019 (CTA-I) dated 21.5.2019 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. Minvesta Infotech Ltd. **Appellant**
Merged wit M/s. Randstad India Pvt. Ltd.
Randstad House, No. 5, 5A, Pycrofts Garden Road
Nungambakkam, Chennai – 600 006.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
No. 26/1, Mahatma Gandhi Marg
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri Vikram Kataraya, Chartered Accountant for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM

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

Final Order Nos. **40365-40369 / 2022**

Date of Hearing : 16.11.2022
Date of Decision: 16.11.2022

Brief facts are that the appellants are engaged in providing and exporting services of software development and maintenance services. They are registered with the Department under the category 'Information Technology Software Services'. They filed six refund claims on 5.10.2017 for an amount of Rs.84,54,926/- of accumulated CENVAT credit for the period October 2015 to March 2017 in terms of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.6.2012. After due process of law, the refund sanctioning authority rejected some of

the refund claims on the ground of being time-barred and also as inadmissible CENVAT availed. The appellant filed appeals before the Commissioner (Appeals) against such orders who vide the orders impugned upheld the same. Hence these appeals.

2. On behalf of the appellant, ld. Consultant Shri Vikram Kataraya appeared and argued the matter. He submitted the details of the refund claims which were rejected by the authorities below as under:-

S. No.	Appeal No. & Date	Order in Original NO. & Date	Amount Involved (Rs.)
1.	31/2019 (CTA-1) (CN) dated 15.2.2019	06/2018-19 (R) dated 17.12.2018	15,672/-
2.	32/2019 (CTA-1) (CN) dated 15.2.2019	07/2018-19 (R) dated 17.12.2018	15,16,598/-
3.	33/2019 (CTA-1) (CN) dated 15.2.2019	08/2018-19 (R) dated 17.12.2018	18,86,759/-
4.	34/2019 (CTA-1) (CN) dated 15.2.2019	09/2018-19 (R) dated 17.12.2018	11,84,020/-
5.	35/2019 (CTA-1) (CN) dated 15.2.2019	10/2018-19 (R) dated 17.12.2018	52,334/-

3. The learned consultant submitted that the refund claims have been rejected alleging that they are time-barred in terms of Notification No. 27/2012. Even if the refund claims are time-barred, the appellant would be eligible to take recredit as per the Notification when the claims are denied. In the present case, the appellant is not able to take recredit after the introduction of GST. The learned consultant stressed that taking into consideration that the appellant is not able to take recredit due to the introduction of GST, the Tribunal may consider the refund of the unutilized credit.

4. Further, it was submitted by the learned counsel that although the notification prescribes that the refund claims have to be filed for each quarter, if the appellant had clubbed the claims pertaining to the quarter and made a single refund claim, there would not be any issue of time-bar. It is explained by the learned consultant that if the refund claims were filed clubbing all the quarters together, the period of one year would have to be computed from the last month of the last quarter and then all the claims would be well within time. To support his contention, he relied upon the decision of the Tribunal in the case of Astra Zeneca India Pvt. Ltd. Vs. CGST, Chennai South reported in 2021 (55) GSTL 39 (Tri. Chennai) and BA Continuum India Ltd. Vs. CST, Mumbai reported in 2018 (6) TMI 1011 – CESTAT MUMBAI. It is submitted by the learned consultant that the Notification does not prohibit the clubbing of various quarters in a single refund claim. Therefore, if the refund claims are considered to be one, the claims would be within the time. He prayed that the appeals may be allowed.

5. The learned AR Shri S. Balakumar appeared and argued for the department. He supported the findings in the impugned order. The learned AR submitted that it is very much clear that when the period of one year is computed from the last month of each quarter of refund claim, all the claims are much beyond the period of one year as envisaged under sec. 11B of Central Excise Act, 1944 read with Notification No. 27/2012. The argument of

the learned consultant that all the claims can be clubbed together cannot be accepted for the reason that the Notification specifically prescribes that the claim has to be filed for each quarter. The alternate contention of the appellant that they are eligible for recredit and therefore refund ought to be allowed in terms of Section 142 of GST, 2017 is untenable as refund claims have been adjudicated only on the ground of time-bar and not under section 142 of GST Act, 2017. He prayed that the appeals may be dismissed.

6. Heard both sides.

7. From the narration of facts, it is clear that when the period of one year is computed from the last month of each quarter of refund claim, all refund claims filed are well beyond the period of one year. Hence the rejection of refund claim as time-barred by the authorities below cannot be considered to be totally erroneous.

8. The learned consultant has put forward a contention that as the Notification does not prohibit clubbing of various claims together, the period of one year has to be computed after clubbing all the quarters together as a single claim. Then if the period of one year is computed from the last month of the last refund claim of last quarter, the claim is within time. He has also relied upon the decision in the case of Astra Zeneca India Pvt. Ltd. (supra). On perusal of the said decision, it is a case in which the CENVAT credit of one year was carried forward to the other

quarter and not a situation where the refund claims were filed clubbing different quarters. The learned consultant has also relied on the decision of the Tribunal in the case of BA Continuum India Pvt. Ltd. (supra). It is pointed out by the learned consultant that in the said case, the refund claim was filed for six months for the period April to September 2012 and the Tribunal set aside the order of rejection which held that refund claims are to be filed for each quarter. In para 3 of the said decision, it is discussed by the Tribunal that Notification prescribes that one claim has to be filed for one quarter. The appellant in the said case had filed one refund claim clubbing the quarters from April to June 2012 and July to September 2012. In the case on hand, the appellant has not filed one claim clubbing different quarters. The appellant has filed separate claims for each quarter. There has been no clubbing of different quarters on the part of the appellant while filing of the refund claims. The Tribunal at appellate stage cannot club the refund claims of different quarters and then consider the period of limitation. This argument of appellant cannot be accepted.

9. Another argument put forward by the learned consultant is that Notification No. 27/2012 prescribes that the assessee has to debit the credit before filing the refund claim. If the refund is denied an assessee would be able to take recredit. The appellant complied with the condition and debited in their CENVAT account before filing refund claims. Now although these claims have been rejected as time-barred, they are not able to take recredit. It is

argued by the learned consultant that prior to introduction of GST, appellant would have been able to take recredit of the said amount when refund claims are denied as time-barred. After the introduction of GST, the appellant is not able to take recredit of the said amount. Thus, the alternative prayer put forward at the time of argument is to grant refund taking into consideration the practical difficulty in taking recredit after introduction of GST. There was no adjudication in regard to the application of Sec. 142 of GST Act, 2017. There was no direction in the order to take recredit. Some amount is denied as not eligible also. The proceedings have emanated by filing refund claims under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012, the adjudication has been only in terms of the above and not under the provisions of Section 142 of GST, 2017. The Tribunal being a creature of the statute cannot grant reliefs extraneous to the adjudication. For the said reason, this prayer of the appellant is untenable. However, the appellant is at liberty to seek relief in respect of recredit and consequent refund as they are eligible for recredit in terms of Notification No.27/2012.

10. In the result, the impugned orders are upheld. The appeals are dismissed.

(Dictated and pronounced in open court)

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

Rex