IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.III

SERVICE TAX MISCELLANEOUS APPLICATION Nos.40447-40450 OF 2023
(filed on behalf of respondent)

SERVICE TAX APPEAL Nos.40590-40593 OF 2014

(Arising out of Order-in-Appeal No.305 to 308/2013 (M-ST) dt. 31.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Chennai-I Commissionerate, No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise, ...Appellant
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

Versus

M/s. Scope International (P) Ltd. ... Respondent
(sought to be changed as Standard
Chartered Global Business Services Private Limited)
No.1, Haddows Road,
Chennai 600 006

APPEARANCE :

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Appellant

Mr. Raghavan Ramabadan, Advocate
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing : 05.10.2023
Date of Decision : 10.10.2023

FINAL ORDER Nos.40879-40882/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

The miscellaneous applications are filed by the respondent seeking to incorporate the change in respondent's name in the cause title as **"Standard Chartered Global Business Services Private Limited."** They have produced the Certificate of Incorporation pursuant to change of name issued by the Ministry of Corporate Affairs.

2. The prayer is allowed. MAs for change of cause title are allowed. Registry is directed to amend the cause title accordingly.

3. The issue involved in all these appeals being similar they were heard together and are disposed of by this common order.

4. The respondent in these appeals is a private limited company engaged in the activity of export of information technology and software related services. The respondent is registered with the service tax department and its output services are exported without payment of tax. On receipt of various input services the respondent availed cenvat credit. Thereafter, in terms of Rule 5 of CCR 2004, the respondent filed four refund claims for refund in cash of unutilized cenvat credit for different periods between the months of February 2008 and March 2009. By separate orders, the original authority partly allowed the refund claims and partly rejected the claims. In the said orders, the refund sanctioning authority had directed the respondent to reverse the entire amount of credit claimed

as refund which has been rejected for cash refund. Aggrieved by such orders, respondent filed appeals before the Commissioner (Appeals) who vide order impugned herein allowed the appeals filed by the respondent. Aggrieved, the department is now before the Tribunal.

5. Ld. A.R Sri M. Ambe appeared and argued for the department. It is submitted by the Ld. A.R that the respondent had filed appeals before the Commissioner (Appeals) mainly on four grounds.

5.1 Firstly, that there is no need to reconsider the formula for prorating the cenvat credit pertaining to domestic turnover as the respondent has claimed the refund by correctly applying the formula.

5.2 Secondly, the credit taken on input services availed in the unregistered premises ought not to have been rejected by the original authority.

5.3 Thirdly, the various input services such as clearing and forwarding services, event management service, gardening services, tour operator, packaging services are eligible for credit as these are used in relation to the business activities of the respondent.

5.4 Fourthly, that the direction of the adjudicating authority to reverse the cenvat credit in respect of the refund rejected is beyond the jurisdiction.

6. The Ld. A.R submitted that the Commissioner (Appeals) has erroneously held that the registration with the department is not mandatory for claiming cenvat credit. The credit availed by the respondent for the unregistered premises ought not to have been allowed.

7. The various services in the nature of clearing and forwarding services, event management service, gardening services, tour operator,

packaging services have no nexus with the output services provided by the respondent and therefore not eligible for credit.

8. Further, the part of the refund claim for the period February 2008 to June 2008 is barred by limitation as the refund for this quarter has been filed only on 18.05.2009. The Commissioner (Appeals) ought to have held that the refund is hit by time bar. It is prayed that the appeals filed by the department may be allowed.

6. Ld. Counsel Sri Raghavan Ramabadran appeared and argued for the respondent. It is submitted that for the different quarter from February 2008 to March 2009, the respondent had filed four different refund claims. The total amount claimed as refund was Rs.5,92,24,041/-. The original authority vide separate orders sanctioned part of the refund claim. Thus, the respondent was eligible to get cash refund of Rs.1,72,24,586/-. The department has not filed any appeal against such sanctioning of the refund. However, the respondent company being aggrieved by the rejection of refund of Rs.4,19,99,455/- had filed appeal before the Commissioner (Appeals). At the time of hearing, the respondent company had restricted their contest in the appeal before Commissioner (Appeals) on that part of the order passed by the adjudicating authority wherein the respondent company was directed to reverse the credit in respect of the amounts for which the refund was not sanctioned. The Ld. Counsel adverted to para-11 and 12 of the order passed by the Commissioner (Appeals) and submitted that the Commissioner (Appeals) has correctly examined the facts and held that the decision of the original authority directing the respondent to reverse the credit which was not granted as cash refund is absolutely improper and bad in law. This is because the respondent company had already reversed the credit in respect of the amount claimed

as refund prior to filing the refund claim. The original authority had granted part of the refund claim as cash refund. In respect of the amount that was rejected as refund, the original authority directed the respondent to again reverse the amount which the respondent company had challenged before the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) has not allowed any further cash refund and has only held that respondent is rightly eligible to take re-credit.

7. In regard to the issue as to the credit availed in unregistered premises the learned counsel submitted that during the disputed period there was no statutory provision prescribing registration of premises as a mandatory condition for availing cenvat credit. The Hon'ble High Court in the case of *CST-III Chennai Vs CESTAT Chennai & Sioninspire Consulting Services (India) Pvt. Ltd.* - 2017 (3) GSTL 45 (Mad.) held that credit cannot be denied on the ground of non-registration of premises. Further, the department cannot examine the admissibility of cenvat credit while adjudicating the admissibility of refund under Rule 5 of CCR, 2004. Ld. Counsel submitted that the department has not issued any show cause notice alleging that the credit availed is erroneous. The grounds alleged in the appeal filed by the department is that the credit availed is ineligible as the input services have no nexus with the output service. It is not necessary that the input services have to be availed within the premises itself. These services were availed by the respondent for providing output services and therefore is eligible for credit. The period involved is prior to 01.04.2011 when the definition of 'input services' had wide ambit as it included "*activities relating to business*".

8. In regard to the issue of limitation, the learned counsel submitted that the claim filed for the period February 2008 to July 2008 was filed on

18.05.2009. The period prior to March 2008 is barred by limitation. The original authority has not granted the cash refund and the respondent has not been granted cash refund by the Commissioner (Appeals) also. The direction of the original authority to reverse the credit again has been set aside by the Commissioner (Appeals) giving opportunity to the respondent to avail recredit. In such circumstances, the bar of limitation is of no consequence. Ld.counsel prayed that the appeals may be dismissed.

9. Heard both sides. On perusal of the facts narrated as above, it is seen that the original authority has granted part of the refund as cash by separate orders. In the said orders, the respondent company has been directed to reverse the amount which has not been granted to them as cash refund. The original authority in Order-in-Original No. 122/2012(R) dt. 20.06.2012 has ordered as under :

> "In view of the above, I hereby sanction a sum of Rs.52,12,699/- (Rupees Fifty Two Lakhs Twelve Thousand Six Hundred and Ninety Nine Only) as refund to M/s.Scope International Private Limited for the period January 2009 to March 2009 and hereby instruct to debit their Cenvat account by a sum of Rs.74,36,434/-"

10. From the above, it can be seen that the original authority has directed the respondent to debit / reverse the cenvat account to the tune of which has not been sanctioned. The respondent has already debited the amount in their cenvat account before filing the refund claim. The original authority ought not to have directed the respondent to reverse the credit again for the mere reason that the refund has not been sanctioned in cash. The Commissioner (Appeals) has correctly understood the matter and discussed it in para 9.1 to 12. At the time of personal hearing, the respondent has categorically stated before the Commissioner (Appeals) that although they are eligible for a higher amount than the amount sanctioned as cash refund, they are not contesting the same. The

respondent company thus put forward the request before Commissioner (Appeals) to allow them to take recredit of the amount which has not been sanctioned by the original authority as they have domestic turnover. The discussions made by the Commissioner (Appeals) is as under :

> "11.1. Further, I find that even that part of the claim which was hit by the limitation of time (in terms of the Sec 11 B of CEA, which is made applicable to the claims under the Rule 5 of CCR, as envisaged in the notification issued under the said Rule) also couldn't be directed to be reversed and in case it was already reversed prior to filing the claim, the same ought to have been allowed as re-credit. But much contrary, the original authority had directed the appellant to reverse the entire amount of credit claimed as refund, which includes that portion of the claim which was held as time barred. Hence I hold that the decision of the original authority to reverse the credit amount that was not granted as cash refund in terms of Rule 5 of CCR was 11.1 absolutely improper, bad in law and ultra vires.
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> 12. It was absolutely unfair on the part of the adjudicating authority to simultaneously deny the refund of the CENVAT credit on hand and on the other hand order for reversal of CENVAT Credit in respect of the input services on which the CENVAT Credit was otherwise could not had been denied or which remained unchallenged. The reversal of CENVAT Credit could be restricted strictly to the extent of the CENVAT Credit that was sanctioned as cash refund, alone. Therefore, I hold that the appellant is rightfully eligible to take re-credit of the unsanctioned amount of their claim, in their CENVAT account, particularly in view of the fact that the said amount is being shown as 'receivables' in their books of account which certainly proves that the doctrine of unjust enrichment would not be applicable to such amount eligible as re-credit."

11. From the above, it can be seen that by the impugned order, the Commissioner (Appeals) has not sanctioned any amount as refund in cash. The respondent has been allowed to take recredit of the amount which has not been sanctioned to them as cash. This being so, the appeal filed by department alleging that credit availed by the respondent is ineligible for the reason that the premises is not registered and that the input services have no nexus with the output services is without any substance.

12. The Hon'ble High Court in the case of *Sioninspire Consulting Services (India) Pvt. Ltd.* (supra) had held that cenvat credit cannot be denied on the ground that premises is not registered. In the case of *K.L.*

Management Vs CST Mumbai - 2017 (7) TMI 412 CESTAT Mumbai it was held that eligibility of cenvat credit cannot be questioned or determined at the time of granting refund of cenvat credit. Since the order passed by the Commissioner (Appeals) is only to avail recredit the contention of the Revenue with regard to limitation is also of no consequence.

13. From the foregoing, we find no merits in the appeals filed by the department. The appeals are dismissed.

(pronounced in court on 10.10.2023)

sd/- sd/-

(VASA SESHAGIRI RAO) **(SULEKHA BEEVI C.S.)**
Member (Technical) Member (Judicial)

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