CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL Nos.41377 to 41380 2017

[Arising out of Order-in-Appeal Nos.26 to 29/2017 (TVL) dated 22.03.2017 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Central Revenue Building, Lal Bahadur Shastri Marg, Madurai 625 002]

M/s.Ramesh Flowers Pvt. Ltd. 100% EOU **Appellant**
A-62(A) SIPCOT Industrial Complex,
Therku Veerapandiapuram P.O,
Tuticorin – 628 002.

Vs

The Commissioner of GST & Central Excise, **Respondent**
Central Revenue Building, Tractor Street,
NGO-A Colony,
Palayamkottai,
Tirunelveli 627 007.

APPEARANCE:

Shri S. Venkatachalam, Advocate
For the Appellant

Ms. Anandalakshmi Ganesh Ram, Superintendent (AR)
For the Respondent

CORAM:

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

Date of Hearing : 10.11.2022
Date of Pronouncement: 16.11.2022

FINAL ORDER Nos. 40361-40364 / 2022

These appeals are filed against the orders passed by the authorities below rejecting the refund claim as time-barred.

2. On behalf of the appellant, Ld. Counsel Shri S. Venkatachalam appeared and argued the matter. He submitted that the appellant is engaged in exporting dry flowers and bouquets. They filed refund claims for the unutilized accumulated cenvat credit under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27/2012-CE (NT) dated 18.06.2012. The refund claims were filed for the respective quarters for an amount of Rs.6,11,540/-, Rs.3,66,312/-, Rs.6,70,721/- and Rs.5,11,398/- being the cenvat credit of inputs and service tax paid by the appellant on input services for the quarters October 2013 to December 2013 / January 2014 to March 2014 / April 2014 to June 2014 / July 2014 to September 2014. Refund claims were filed on 23.12.2014, 27.03.2015, 30.06.2015 and 25.09.2015. The first three refund claims were returned to the appellant by the authorities below vide letters dated 27.02.2015, 07.04.2015 and 20.07.2015 stating that documents furnished are insufficient and that claims required corrections. The appellants resubmitted the refund claims after making good the omissions and also furnished necessary documents. The first three refund claims were thus resubmitted on 10.07.2015, 10.07.2015 & 01.09.2015. The refund sanctioning authority rejected all the refund claims as time-barred stating that the refund claims have been filed beyond the period of one year as envisaged under Section 11B of the Central Excise Act, 1944. He submitted that the Department has taken the date of resubmission of the claims as the date of filing claims and therefore held that the claims are time-barred. Ld. Counsel submitted that the said view of the Department is incorrect. The date

of original filing of the claims should be considered as the date for computing the period of limitation and not the date of resubmission. He relied upon the following decisions:

(i) 2015 (315) E.L.T. 100 (Tri. – Kolkata) - Balmer Lawrie & Co.Ltd.

(ii) 2009 (237) E.L.T. 689 (Tri. – Mumbai) - Duraline India Pvt. Ltd.

(iii) 2006 (206) E.L.T. 536 (Tri. – Bang.) Rubberwood India (P) Ltd.

(iv) 2005 (184) E.L.T. 240 (Guj.) - United Phosphorus Ltd.

(v) Chennai Petroleum Corpn. Ltd Vs CGST & C EX – 2019 (369) E.L.T. 1636 (Tri.-Chennai)

3. Ld. Counsel submitted that the original authority failed to consider the above decisions and held that these decisions are not applicable as these decisions pertain to the period before 2012. Ld. Counsel submitted that there is no change in Rule 5 of Cenvat Credit Rules, 2004 before or after 2012. Notification issued under Rule 5 of CCR has been changed. Prior to 2012, Notification No.5/2006 was applicable whereas after 2012 Notification No.27/2012 is to be followed. A plain reading of both the notifications would establish that there is no substantial change in the basic principles for claim refund of unutilized credit. Hence the finding of the lower authority that the above decisions are not applicable and that refund claims are time-barred is erroneous. It is submitted by the Ld. Counsel that in regard to the fourth claim for the period July 2014 to September 2014, the appellant was not issued even a deficiency memo. As per CBEC Manual, it is provided in para 3.2 of Chapter 9 that a deficiency memo

should be issued within 15 days of receipt of the refund claim. The same has not been followed and the claim has been rejected as time-barred. With regard to the fourth claim, the Department has computed the period of one year from the first month of the respective quarter and held that the refund is time-barred. He submitted that computation of period of one year has been erroneously done by the department to hold that refund claims are time-barred. He prayed that appeals may be allowed.

4. Ld. A.R Ms. Anandalakshmi Ganesh Ram appeared and argued for the department. She adverted to Notification No.27/2012-CE (NT) dated 18.06.2012 and submitted that clause (b) of para-3 of the said notification states that claim has to be filed before expiry of the period specified in Section 11B of the Central Excise Act, 1944. The appellant had initially filed the refund claims without supporting document. The same was returned to the appellants. The refund claims were not complete in all respects and the claims were thereafter filed beyond the period of one year. The contention of the appellant that the date when the claim was originally filed has to be taken to compute the period of one year cannot be accepted as the claim was incomplete.

5. Ld. A.R submitted that the contention of the appellant that period of one year has to be computed from the last month of the quarter cannot be accepted. If the period of one year is computed from the first month of each quarter it can be seen that the claims have been filed beyond the period of one year. She relied upon the decision in the

case of *CCE Chennai Vs Celebrity Designs India Pvt. Ltd.* - 2015-TIOL-646-HC-MAD-CX and the decision in the case of *CCE Vs GTN Engineering* - 2012-TIOL-369-HC-MAD-CX. Ld. A.R prayed that the appeals may be dismissed.

6. Heard both sides.

7. The details of the refund claims filed along with date of filing of refund claims as well as date of resubmission are as below :

Quarter	Date of first export during the quarter	Due date for filing the refund claim	Date of filing the refund claim	Date of Initial submission	Refund Amount (Rs.)
Oct – Dec 2013	17.10.2013	30.09.2014	23.12.2014	10.07.2015	6,11,540
Jan-March 2014	01.01.2014	31.12.2014	27.03.2015	10.07.2015	3,66,312
April-June 2014	04.04.2014	31.03.2015	30.06.2015	01.09.2015	6,70,721
July-Sept. 2014	24.07.2014	30.06.2015	25.09.2015	-	5,11,398

8. The refund claims have been rejected by the authorities below holding that when the period of one year is computed from the date of resubmission of the claim it is time-barred. The department has taken a view that when claims have been resubmitted, the period of one year has to be computed from the date of resubmission. The discussion made by the original authority in this regard is as under :

> "08. As regards the second issue as to whether the subject claim filed by the exporters for the quarter October, 2013 to December, 2013 is time barred. I find that the claim had been filed initially on 23.12.2014 without any supporting documents required to be submitted as specified in Form-A. Hence, their claim had been returned to them and their claim

> with the documents specified had been filed only on 10.07.2015, which is after a period of one year from the end of the quarter October, 2013 to December, 2013. The contention of the exporters that the date i.e. 23.12.2014 on which they filed the claim initially should be considered as the date of filing the claim cannot be accepted since any claim which does not satisfy the safeguards, conditions and limitations specified by Notification No.27/2012-CE(NT) dated 18.06.2012 ibid cannot be considered as a valid claim filed under Rule 5 of the CCR, 2004. Hence, I am convinced to hold that the claim is time barred."

9. The rejection of refund claims as time-barred by ignoring the date of initial filing of the claim is not sustainable. The Tribunal in the case of *Repco India Ltd. Vs CCE Belapur* - 2016 (43) STR 203 (Tri.-Mumbai) had analyzed the similar issue and held that when claim has been returned for rectifying the deficiencies the claim cannot be held to be time-barred by computing the period of one year from the date of resubmitting the claim. The relevant paragraphs of the said decision are reproduced as under :-

> **"10.** For the quarters relevant to the two claims, the stipulated deadline was six months from the end of the quarter. Therefore, the appellant did comply with this stipulation. The returns of the applications for rectifying deficiencies and the re-filings thereafter is a clear indication that the competent authorities were not unaware that the claims had been filed on time. If the completeness of the application was a *sine qua non* for admissibility of the application, the claim could well have been rejected by immediate issue of a show cause notice and adjudication thereupon instead of taking the course that it did.
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> **11.** With this elapse of time in finalizing the claim for refunds the validity of which was *sub silentio* not questioned, the original authority appeared to have been actuated by the probability of claim for interest arising from the delay that entailed. To reject the claims thereafter, not on merit but by resort to bar of limitation, at the end of the protracted process reflects lack of responsibility and lack of accountability. That this is so is confirmed in the concurrence with this summary disposal by the first appellate authority.

12. We are constrained to make such an observation because the law on this aspect is well-settled. That the appellant is an exporter whose prices, in accordance with well-entrenched policy, are not to be loaded with the tax element should have been sufficient cause to demonstrate judiciousness in disposing off the claims.

13. The Hon'ble High Court of Delhi has, in *Commissioner of Central Excise, Delhi-I* v. *Arya Exports and Industries* [2005 (192) E.L.T. 89 (Del.)], held :

> '4 ….. The assessee had filed an application under Rule 57F94) for refund of the excise duty wrongly recovered from him. This application was declined on the ground that that it was not made in the prescribed form and necessary documents were not annexed thereto. Thereafter another application was filed by the assessee which again was dismissed being beyond the period of limitation'

and citing the relevant portion of the impugned order of this Tribunal

> … … … The refund claim cannot be denied to them merely on the ground that the same was not filed in the prescribed form. If the refund claim has not been filed on proper form or without necessary documents the Department can direct the appellants to file the same in proper prescribed form along with supporting documents. But as far as the time for filing the refund claim is concerned, it has to be considered from the date the refund claim was filed initially in the form not prescribed or without documents.'

the Court held

> 5. The above approach of the Tribunal is in consonance with the settled principles of law and we see no reason to interfere, … … … … The assessee had admittedly submitted the application within the prescribed time and if it suffers from any procedural irregularity the Department was under an obligation to require the assessee to submit the requisite documents. Refund is the right of the assessee and should not be taken away by the State especially with the approach of the kind that was adopted in the present case. The appeal is dismissed on merits.'

14. This Tribunal in *Duraline India Pvt. Ltd.* v. *Commissioner of Central Excise, Goa* [2009 (237) E.L.T. 689 (Tri.-Mumbai)], *Rubberwood India (P) Ltd.* v. *Commissioner of Customs (Appeals), Cochin* [2006 (206) E.L.T. 536 (Tri.-Bang.)], *Goodyear India Ltd.* v. *Commissioner of Customs, New Delhi* [2002 (150) E.L.T. 331 (Tri.-Del.)], *Commissioner of Central Excise, Bolpur* v. *Bhandigurhi Tea Estate* [2001 (134) E.L.T. 116 (Tri.-Kolkota)], *Wood Working Centre* v. *Collector of Central Excise, Indore* [1996 (85) E.L.T. 201 (Tribunal)] and *Rohit Pulp & Paper Mills Ltd.* v. *Collector of Central Excise* [1991 (53) E.L.T. 440 (Tribunal)] has consistently been reiterating this position. The decision of the Tribunal *in re : Rohit Pulp & Paper Mills Ltd*. has been affirmed by the Hon'ble Supreme Court in dismissing the appeal of Revenue in Civil Appeal No. 7953 of 1995 by order of 18th March, 1996 [1996 (84) E.L.T. A52 (S.C.)]. In the face of this settled position, the lower authorities have erred grievously in denying the refund for almost five years.

15. We would also like to touch upon yet another issue raised in these proceedings: that appellant had wrongly enhanced the claim during the pendency of the claim. This has also been settled by the Tribunal in *Premier Tyres Ltd., Kalamassery* v. *Collector of Customs, Madras* [1984 (16) E.L.T. 419 (Tribunal)] thus

> '31. In view of the foregoing, answer to the question for decision in the present appeal is that if on a proper classification refund of larger amount than admissible under the heading or item originally claimed becomes payable to the appellant, such larger amounts should be refunded to the appellants and should not be limited to the amount admissible under the item or heading originally claimed.
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> 32. It has been expressed that these are taxation matters and the interpretation with regard to another enactment should not be imported herein. That is hardly a ground to ignore the law laid down by the Supreme Court, when the Supreme Court judgments do not make any such exception in respect of taxation matters.'

16. We, therefore, find that the appellant had filed the application for refund within the deadlines stipulated in the relevant notification. The goods in the production of which the taxable services were used had been exported. We also notice that protracted correspondence was with the object of ensuring that all deficiencies in the application were made good. After this prolonged exercise, it would appear that the original authority found no ground for rejection of the claims other than an erroneous interpretation of the bar of limitation. That the limitation should be computed with effect from date of original, *albeit* incomplete, filing being settled law, the appellant is entitled to refund as per claim."

10. Similar view was taken in the case of *Chennai Petroleum Corpn. Ltd. Vs CGST & C.Ex., Chennai* – 2019 (369) ELT 1636 (Tri.-Chennai).

The relevant paras of the above decision are reproduced as under :

> **6.2** It is true that the refund sanctioning authority cannot process the refund claim without necessary documents. However, the time by which the appellant can resubmit the refund claims along with the documents ought to have been mentioned by the refund sanctioning authority. In the absence of such a time limit for resubmitting the refund claims, the appellant has sought to collect the documents and resubmit the refund claims on 2-3-2018. When the refund claims have been returned and not rejected and when they have been filed again, such filing has to be considered as resubmission of the refund claims and not as fresh refund claims.

> **7.** The arguments put forward by the Ld. AR for the Department referring to Chapter 9 of the C.B.E. & C. Manual does not support the view taken by the authorities below for the reason that the letter dated 6-1-2017 only returns the refund claims and does not reject or dismiss the same.
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> **8.** In *M/s. Reliance Communication Ltd.* (supra) it was held that when the refund claim is resubmitted, the same cannot be considered as a fresh refund claim. The provisions contained in the C.B.E. & C. Manual of Supplementary Instructions were considered in this decision. Further, in *M/s. United Phosphorus Ltd.* (supra), it was held that the refund sanctioning authority cannot part with the refund claim by returning the same. He is obliged to pass an order on the merits of such application. When the refund sanctioning authority who received the original refund claims has not rejected these refund claims on merits and has merely returned the same, further filing of the refund claims ought to be considered only as resubmission and not as fresh claims.
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> **9.** Relying upon the decisions put forward by the Ld. Counsel for the appellant and also as per the discussions made above, I am of the view that the refund claims in these appeals, which are resubmitted by the appellant, are not barred by limitation. Hence, the matter is remanded to the refund sanctioning authority who shall decide these claims on merits. The impugned orders are set aside."

11. The Principal Bench of the Tribunal in the case of *CCE Indore Vs National Steel & Agro Industries Ltd*. - 2016 (42) STR 345 (Tri.-Delhi) held that if the claim is initially filed within time, the resubmission of claim has to be considered in continuation of the earlier claim and cannot be held to be time-barred. The relevant paras of the Tribunal's decision (supra) are reproduced as under :

> **"3.** We have considered Revenue's contentions. We find that the issue of sanction of refund claim of service tax paid on LDD & TSC charges has been discussed by Commissioner (Appeals) citing C.B.E. & C. Circular No. 104/07/2008-S.T. wherein it has been clarified that such storage/temporary warehousing facility is a part and parcel of Goods Transport Agency service. Further as has been observed by

> Commissioner (Appeals) the respondent had first filed refund claim within 60 days from the end of relevant quarter before Assistant Commissioner, Central Excise Division, Indore who after considerable period advised that the claim should be filed before Assistant Commissioner of Central Excise of another Division which the respondent did on 10-6-2008. In these circumstances, it is not unreasonable on the part of lower authorities to treat the refund claim as having been filed with Revenue within the prescribed period of two months from the end of the relevant quarter. In the case of *CST, Mumbai* v. *Reliance Communication* - 2008 (11) S.T.R. 258, such resubmitted claim was treated to be in continuation of earlier claim and therefore not hit by time-bar.
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> **4.** In the circumstances, we do not find any such infirmity in the impugned order as to warrant appellate interference. Therefore the appeal is dismissed."

12. In the present case, when the period of one year is computed from the date of initial filing of the claim, the claims are made well within time. The date of initial submission of the refund claim is 10.07.2015, 10.07.2015, 01.09.2015. The Ld. A.R has relied upon the decisions in the case of *GTN Engineering* and *Celebrity Designs India Pvt. Ltd.* (supra). The issue considered in these decisions was whether the limitation prescribed in Section 11B of Central Excise Act, 1944 is applicable when refund claim is filed under Rule 5 of CCR, 2004 read with Notification No.5/2006. In the present case there is no dispute as to whether limitation is applicable or not. The dispute is as to how to reckon the period of one year. Hence these decisions are of no support to the Revenue. I hold that the three refund claims which have been rejected as time-barred ignoring the date on which the claims were initially filed cannot sustain and requires to be set aside.

13. In regard to the claim for July 2014-September 2014 it is seen that when computed from the last month of the quarter, the claim is filed well within time. The claim has been held to be time-barred computing the period of one year from the first month of the quarter. When the notification prescribes to file the refund claim for a quarter, the entire quarter has to be considered as a whole, without splitting each month. The appellant is eligible to get refund of unutilized credit of every month. The procedure to file refund claim for a quarter is only to make the filing and processing easier. The last month which is included in the quarter would have to be reckoned for computing the period of one year. When the notification allows the assessee to file refund claims for a quarter, such right of refund cannot be snatched away by computing one year from the first month of the said quarter. Further, the appellant was not even issued a deficiency memo.

14. Ld. A.R has submitted that even at the time of resubmission, the appellant has not furnished necessary documents. It is noted in the impugned order as well as the order passed by the original authority that the appellant has not furnished E.R.2 returns and other necessary documents for processing the refund claims. Taking note of this aspect, I am of the view that matter requires to be remanded to the original authority for processing the refund claims after giving an opportunity to the appellant to furnish the required documents.

15. From the discussions above, the impugned order rejecting the refund claims as time-barred is set aside. The matter is remanded to

the original authority who shall process the refund claims after giving an opportunity to the appellant for personal hearing as well as to furnish the requisite documents. The appeals are partly allowed and partly remanded to the original authority in the above terms.

(Pronounced in court on 16.11.2022)

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

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