CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 40018 of 2023

(Arising out of Order-in-Appeal No. 55/2022 (CTA-II) dated 28.10.2022 passed by Commissioner of GST and Central Excise (Appeals-II), Newry Towers, 2nd Floor, No. 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Tata Steel Downstream Products Ltd. **...Appellant**
(Formerly known as TATA Steel Processing & Distribution Ltd.),
Plot No. 156, T.H. Road,
Thiruninravur,
Thiruvallur – 602 024.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, I-2054, II Avenue,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Ms. P. Jayalakshmi, Advocate
For the Respondent : Mr. Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40487 /2024

DATE OF HEARING : 14.12.2023
DATE OF DECISION : 29.04.2024

Order:-

Service Tax Appeal No. ST/40018/2023 has been filed by M/s. Tata Steel Processing and Distribution Limited (TSPDL), assailing the Order-in-Appeal No. 55/2022 dated 28.10.2022 passed by Commissioner

(Appeals-II), Chennai by upholding the Order-in-Original No. 08/2021 dated 22.03.2021 passed by the Assistant Commissioner of CGST & Central Excise, Chennai Outer Commissionerate confirming the Service Tax demand of Rs.11,35,700/- under Section 73 of the Finance Act, 1994 ('ACT') besides levy of applicable interest under Section 75 of Act *ibid* and imposing penalty of Rs.1,13,570/- under Section 76 of Act *ibid*.

2. Briefly stated the facts of the case are as detailed below:-

2.1 The Appellant are engaged in providing taxable services of processing iron and steel on job work basis to M/s. Tata Steel Limited and were registered with erstwhile Service Tax Commissionerate under the category of Business Auxiliary Service (BAS). On account of increased packing cost, the appellants raised three supplementary invoices and paid Service Tax and Cess as detailed below which were reflected in the ST-3 returns filed on 25.04.2016 and 25.10.2016 respectively.

S.No.	**Date**	**Bill No.**	**Invoice Amount**	**Service Tax**	**Swach Bharat Cess (SBC)**	**Krishi Kalyan Cess (KKC)**	**Total**
1	31.03.2016	CHSSC/012	3,26,28,200/-	45,67,948/-	1,63,141/-	--	4731089
2	30.06.2016	CHSSC/007	31,48,618/-	4,40,807/-	15,743/-	15,743	472293
3	30.09.2016	CHSSC/014	46,83,790/-	6,55,731/-	23,419/-	23,419/-	702569
		TOTAL	**4,04,670,608/-**	**56,64,486/-**	**2,02,303/-**	**39,612/-**	**59,05,951/-**

2.2 Meanwhile, their customer *Viz*. M/s. Tata Steel Ltd. rejected the supplementary invoices raised on account of increased packing cost as not acceptable. After negotiations, the Appellants revised their claims

and submitted a revised Supplementary invoice No. CSSC/PROC/009 dated 26.06.2017 for Rs.1,05,42,205 on which Service Tax of Rs.12,83,399/-, along with Swach Bharat Cess for Rs. 45,836/- and Krishi Kalyan cess of Rs.45,836/- were paid after adjusting the Service Tax amounts already paid in respect of Sl.Nos. 2 and 3 of Para 2.1 above and also submitted a refund claim in respect of Service Tax and Cess paid on all the three supplementary invoices earlier raised.

2.3 It appears that the appellant availed credit of Rs. 50,08,755/-, Rs.1,78,884/- and Rs.15,743/- towards excess Service tax, SBC and KKC paid in respect of sl. No.1 and 2 of the table in Para 2.1 above and utilised the same for payment of Service Tax for subsequent period under Rule 6(3) of Service Tax Rules,1994. As for excess payment of Service Tax and Cess in respect of Sl.No.3 of the said table, the appellant availed credit during March 2017 and utilised the same for payment of Service Tax for subsequent periods.

2.4 To pre-empt any possible denial of credit on excess paid service Tax and cess, the Appellant vide letter dated 21.03.2017 submitted a refund claim of 59,05,952/- under Section 11 B of the Central Excise Act, 1944 as made applicable under Section 83 to Finance Act, 1994. The refund claim was processed and decided separately. An Order-in-Original No. 28/2018 was passed by the adjudicating authority rejecting the refund claim on the ground that the amount claimed as refund was already adjusted by the Appellant. Upon appeal by the Appellant, the Commissioner (Appeals) *vide* Order-in-Appeal No. 594/2018 dated 19.12.2018 rejected the appeal and upheld the Order-in-Original. On further appeal, the Hon'ble CESTAT *vide* Final Order No. 41276/2019 dated 13.11.2019 remanded the matter to the Original Adjudicating Authority for fresh consideration.

2.5 It further appears that though the appellant claimed that the excess Service Tax paid has been taken as credit in their CENVAT account for utilisation towards Service tax liability, the same was not found reflected in their ST 3 returns. Vide their clarification dated 20.11.2018, the appellant had out of the above amount of Rs.59,05,952/- had adjusted Rs.11,35,700 (Rs.10,96,538/- and SBC-Rs.39,162/-) towards Service Tax liability for February 2017.

2.6 So, the Department was of the view that adjustment of Rs.11,35,700/- towards Service tax liability for February 2017 was incorrect in terms of Rule 6(3) of Service Tax Rules, 1994, resulting in short payment of Service Tax and therefore, it was alleged that the appellant had contravened the provisions of Section 68 read with Rule 6 of Service Tax Rules, 1994 making them liable for payment of Service Tax of Rs.11,35,700/-.

2.7 A Show Cause Notice No. 08/2019 dated 10.10.2019 was issued to the Appellant seeking to demand and recover an amount of Rs.11,35,700/- under Section 73 of the Finance Act, 1994 besides proposing to levy interest under Section 75 and to impose penalty under Section 76 of the Act *ibid*.

2.8 After due process of law, the Adjudicating Authority *vide* Order-in-Original dated 22.03.2021 confirmed the demand of Service tax proposed in the Show Cause Notice along with interest and imposed a penalty of Rs.1,13,570/- under Section 76 of the Act *ibid*.

3. Aggrieved, the appellant filed an appeal before the lower Appellate Authority who *vide* Order-in-Appeal No. 55/2022 dated 28.10.2022

rejected the appeal filed by the Appellant and upheld the order dated 22.03.2021 of the Original Adjudicating Authority.

4. Hence the present appeal by the Appellant before this forum.

5. The Grounds of Appeal filed by the Appellant averred that:-

(i) The SCN No. 08/2019 dated 10.10.2019 had alleged that the adjustment of excess payment of Service Tax was neither reflected in the ST3 returns nor the Appellant had submitted any proof of such adjustment when the adjudicating authority was well aware of the adjustment of excess payment of Service tax when a letter dated 21.03.2017 was addressed by the appellant which was also mentioned in Para 3 of the Show Cause Notice. Further, the adjustment was reflected in the ST-3 return submitted on 25.04.2017.

(ii) The impugned SCN was time barred and legally not sustainable as the SCN was issued only as an afterthought after passing of the Order-in-Original and Order-in-Appeal rejecting the refund claim of the appellant on the grounds that the amount claimed as refund was already adjusted by the Appellant.

(iii) It was submitted that the first appellate authority as well as the original adjudicating authority had erred in passing the impugned orders solely on revenue consideration instead of going into the facts and merits of the case.

(iv) It was pointed out the Adjudicating Authority ignored the Final Order No. 41276/2019 dated 13.11.2019 of the Hon’ble CESTAT wherein it was observed that the Appellant was confining the refund claim to only one invoice to the tune of Rs.47,21,090/- while the other two were adjusted and hence remanded the matter directing the Original authority for de-novo adjudication of the refund claim

which was not taken up even after 3 years of the said order. Instead, the adjudicating authority has initiated proceedings for the recovery of excess payment of Service Tax availed as credit which was partly adjusted towards the Service Tax liability.

6. The Ld. Advocate Ms. P. Jayalakshmi, appearing on behalf of the Appellant submitted that:-

(i) The rejection of supplementary invoices by the customer was deemed insufficient grounds for an excess Service Tax payment. However, a Chartered Accountant Certificate was produced to show reversal of the three supplementary invoices and the fact that no consideration was received on the same, but unfortunately the same was not considered by the authority.

(ii) The adjudicating authority had held that the refund claim for the first invoice was time barred and for the second and third invoices, the appellant provided no evidence of customer rejection and the adjustment of payments for subsequent periods. However, despite the Appellant providing the Chartered Accountant Certificate to prove rejection, the same was not considered.

(iii) It was contended that the impugned order has mis-interpreted the law, ignores arguments of time bar and is solely revenue focussed, especially when the order states :

> *"6. A perusal of the above provisions will indicate that the bar stated in sub-rule 4(B) is not attracted in the case of the appellant and they can adjust it for payment of service tax in subsequent month or quarter as provided in sub-rule 4(A)*
>
> *7. However, from the factual matric, the following is clear:*
>
> *(i) The Appellant had taken credit of rs.59.05,952/- being the excess tax paid which is admissible under Rule 6(4A) of STR.*
>
> *(ii) The Appellant utilised Rs.11,35,700/- out of the credit to discharge Service Tax in the following quarter.*
>
> *(iii) The appellant has however filed a refund for the entire excess paid tax of Rs.59,05,952/- which is to be considered in de-novo as directed by the Hon'bel Tribunal "*

It was pointed out that the above observation is in fact erroneous as the Hon'ble Tribunal in its Final Order No. 41276/2019 dated 13.11.2019 has specifically recorded the fact that the Appellant was not agitating the refund claim pertaining to the second and third invoices as the same stands adjusted. The same has been extracted and reproduced below:-

> *"----------The appellant informed the department that they availed credit of excess amount paid as service tax to the tune of Rs.50,08,755/- and other cess as applicable. As abundant caution that the department may reject the credit, appellant filed refund claim. The original authority rejected the refund claim which was upheld by the Commissioner (Appeals). Hence this appeal.*
>
> *2. On behalf of the appellant, Ld. counsel Shri S. Muthu Venkatraman submitted that the appellant is confining the contest of refund in the present appeal to one invoice which is to the tune of Rs.47,21,090/-. The contest with regard to other two invoices is given up by the appellant since the amount has already been adjusted to the future credit of the customer.*
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> *7. On perusal of the order-in-original passed by the original authority, it is seen that the appellant was given date for personal hearing. Later as there was no representation the matter was decided exparte. In appeal, the Commissioner (Appeals) has considered the issue on merits and thereafter rejected the refund claim. However, it is contented by the appellants that they had furnished Chartered Account certificate before the Commissioner (Appeals) to adjudge the issue of not having passed on the burden of duty incidence to another person and also that they have paid excess amount in terms of packaging charges. On-going through the impugned order, it is seen that COMMISSIONER (Appeals) has not considered the Chartered Accountant certificate alleged to be produced by the appellant. Without such documents the issue of unjust enrichment cannot be decided. In such circumstances, I deem it fit to remand the matter to the original authority who shall consider the refund claim afresh after taking 4 cognisance of all the documents produced by the appellant. Needless to say that the appellant shall be given a personal hearing and also sufficient opportunity to produce additional evidence, if any."*

Hence, it was stressed that there can be no question of invocation of doctrine of approbate and reprobate as the tribunal specifically recorded non- agitation of refund for the adjusted portion.

7. Heard both sides and carefully considered the submissions and evidences on record.

8. The only issue that is to be decided in this appeal is whether the appellant is eligible to make adjustment of excess service tax paid against future service tax liability.

9. The facts in this appeal indicate that the appellant has raised 3 supplementary invoices due to increased packing cost on their customer *Viz.,* M/s. Tata Steel Ltd., for whom they are working as a job worker and have paid the service tax including cesses of Rs.59,05,952/-. As M/s. Tata Steel Ltd. has rejected these 3 supplementary invoices and having not paid, the appellant has taken the credit of excess service tax paid. The appellant have filed a refund claim as a matter of abundant precaution. After negotiations, on revising their claim, the appellant has again raised a revised supplementary invoice involving service tax amount of Rs.12,83,399/- + Cesses which was paid adjusting the service tax amount already paid in respect of 3 supplementary invoices earlier raised. Thus, it is to be noted that the appellant has availed credit of the service tax paid on the supplementary invoices and used a part of the amount for paying the service tax in the subsequent period on revised subsequent supplementary invoice raised.

10. The Lower Appellate Authority after analysing the provisions of Rule 6 of the Service Tax Rules, 1994, has come to the conclusion that the appellant is eligible for adjustment of the service tax excess paid. However, he rejected the appeal as the appellant has filed a refund claim for the entire service tax of Rs.59,05,952/- paid which is under *denovo* adjudication as directed by the Tribunal *vide* Final Order No. 41276/2019 dated 13.11.2019. However, the sanction of refund or otherwise is not the issue in this appeal.

11. In this appeal, only the issue of legality of adjustment of service tax liability from the credit availed in terms of Rule 6(3) of Service Tax

Rules, 1994, is being examined. The Original Adjudicating Authority has demanded service tax amount of ₹11,35,700/- under Section 73 of the Finance Act, 1994 along with interest and also imposed penalty under section 76 of the Act *ibid* after arriving at a decision that excess payment of service tax paid by the appellant originally on the 3 supplementary invoices raised, would not come under the category of excess payment and as the appellant have adjusted future service tax liability in the subsequent invoice, the demand raised was confirmed.

12. After going through the appeal records, it is not in dispute that there is an excess payment of service tax of Rs.59,05,952/- from the 3 supplementary invoices and out of it, the credit availed on service tax excess paid on the 2nd and 3rd supplementary invoice was adjusted by the appellant towards the service tax liability on the revised supplementary invoice raised. The only reason for rejecting the appeal by the Lower Appellate Authority is that the appellant has filed a refund claim for the entire excess tax paid on the 3 supplementary invoices originally raised. It is to be observed that the appellant could not have filed refund claim for the full excess service tax paid and simultaneously used a part of the excess service tax paid towards service tax liabilities in subsequent months.

13. It is also noted that the appellant has submitted the refund claim under Section 11B of the Central Excise Act, 1944, as made applicable to Finance Act, 1994. This refund claim was rejected by the Original Adjudicating Authority on the ground that the appellant has adjusted a part of the credit taken. On appeal, the Commissioner (Appeals) *vide* Order-in-Appeal No. 594/2018 dated 19.12.2018, had rejected their appeal upholding the Order-in-Original, which was remanded by the CESTAT for *denovo* consideration. The stage at which these proceedings are pending is not coming out from the facts in this appeal. However, Tribunal Final Order No. 41276/2019 dated 13.11.2019, has recorded the

fact that the appellant is not contesting the service tax excess paid in respect of 2nd and 3rd supplementary invoices. The Ld. Counsel Shri S. Muthu Venkataraman during the hearing before the Tribunal in the above case has submitted that the appellant is confining the contest of refund to one invoice which is to the tune of Rs.47,21,090/-. In view of the above, I affirm the decision of the Lower Appellate Authority holding that the appellant is eligible for adjustment of the service tax liability on the subsequent supplementary invoice raised against the excess service tax paid on the original supplementary invoices which were not paid by their customer *Viz.,* M/s. Tata Steel Limited. I find that the appellant has submitted Chartered Accountant's Certificate to the effect that they have cancelled 3 supplementary invoices raised originally and that they have not received any consideration in respect of these invoices.

14. For the above reasons, the impugned Order-in-Appeal No. 55/2022 (CTA-II) dated 28.10.2022 is not sustainable and ordered to be set aside. The appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 29.04.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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