CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20193 of 2020

(Arising out of Order-in-Appeal No. 211-212/2020 dated 16/03/2020 passed by Commissioner of Central Tax , BANGALORE-I(Appeal))

Scribetech India Healthcare Pvt Ltd
AJ Towers, 1st Floor, 40/509, 8th Cross
Kanakapura Rd., 7th Block, Jayanagar
BENGALURU - 560082
KARNATAKA

Appellant(s)

VERSUS

Commissioner Of Central Tax, Bengaluru South Commissionerate
5th Floor, C.R. Buildings, PB No-5400,
Queens Road
Bangalore - 560001
Karnataka

Respondent(s)

And

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Appearance:

Shri N. Anand, Advocate
Ravi Shankar Legal
No. 152(18), Race Cource Road,
Bangalore, - 560001
Karnataka — For the Appellant

Shri P. Gopakumar,
Joint Commissioner(AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20737-20738 / 2020

Date of Hearing: 13/10/2020
Date of Decision: 13/10/2020

Per : S.S GARG

The appellant have filed these two appeals directed against the common impugned order dt. 16/03/2020 passed by the Commissioner(Appeals) whereby the Commissioner has rejected appeals of the appellant and upheld the order passed by the original authority. since the issue in both the appeals is identical and against a common impugned order, both the appeals are taken together for the purpose of discussion and disposal. The details of refund claims which have been rejected are given below:-

Period	Refund claimed (Rs.)	Amount rejected (Rs.)
April 2017 to June 2017	3,62,052/-	3,62,052/-
January 2017 to March 2017	5,89,451/-	5,89,451/-

2. Briefly the facts of the present case are that the appellant is a private limited company and registered as 100% EOU under the Foreign Trade Policy. The appellant is in the business of rendering services of medical transcription for hospitals situated outside India and is registered as service provider under the category of Business Auxiliary Service under the

Finance Act, 1994 read with Service Tax Rules, 1994. For rendering the export of service, appellant is receiving input services on which service tax has been charged and paid and thereafter appellant have been availing cenvat credit of the same in their books of accounts. During the period in dispute, appellant has availed cenvat credit as shown above on input services used for export of services and filed refund applications with the Assistant Commissioner along with various documents. Thereafter the Assistant Commissioner issued show-cause notices proposing to reject the refund claims filed by the appellant on various grounds as shown in the show-cause notices. After considering the submissions of the appellant, the adjudicating authority vide Order-in-Original rejected the refund claims. Aggrieved by the said order, appellant filed appeals before the Commissioner(Appeals) who also rejected the same.

3. Heard both the sides and perused the records.

4. 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 Cenvat Credit Rules and Notification No.27/2012-CE(NT) dt. 18/06/2012. He further submitted that the only solitary finding on which refund application has been rejected in the impugned order is that the closing balance of the cenvat credit at the end of the quarter as per ST-3 was 'nil' which was less than the refund amount for respective quarter. He further submitted that the appellant have reversed the cenvat credit and produced the evidence along with refund claim in order to claim the refund. He also submitted that under the provisions of Notification No.27/2012, as per paragraph 2(h), for refund of credit under Rule 5 of the Cenvat Credit Rules, 2004, the applicant is required to debit the amount claimed as refund from the Cenvat Credit at the time of making the claim and in the present case, the appellant have debited the cenvat credit account and the same has been recorded in the Order-in-Original also. He further submitted that the appellant has submitted the proof of reversal of cenvat credit also. He further submitted that from the copy of ST3 returns filed before the original authority, it is evident that the entire cenvat credit availed for each of the

month has been reversed for the respective quarter. He further submitted that the respondent has not properly understood the conditions and the limitation envisaged in paragraph 2(g) of Notification No.27/2012-CE(NT) dt. 18/06/2012. He has also claimed interest on delayed refund of cenvat credit in their grounds of appeals as per the law laid down in the following judgments:

a. Ranbaxy Laboratories Ltd. Vs. UOI [2011(273) ELT 3 (SC)]
b. UOI Vs. Hamdard (Wakf) Laboratories [2016(333) ELT 193 (SC)]
c. Surajbhan Synthetics (P) Ltd. Vs. CCE [2017(49) STR 98 (Tri. Bang.)]
d. Om Refoils Ltd. Vs. UOI [2018(361) ELT 98 (P&H)]

5. On the other hand, the learned AR has reiterated the findings of the impugned order and submitted that the refund claims have been rightly rejected as the appellant have not specifically fulfilled the conditions 2(g) and 2(h) of the Notification. He further submitted that the appellant has not debited the cenvat credit account with the amount of refund before filing the refund claim. In support of his submission, he relied upon the following judgements:-

a. Wisdomeleaf Technologies Pvt. Ltd. Vs. CCT, Bangalore North [2019(6) TMI 209 –CESTAT BANGALORE]
b. Apex Co Vantage India Pvt. Ltd. Vs. CCT, Rangareddy –GST [2018(6) TMI 814 – CESTAT Hyderabad]

6.1. After considering the submissions of both the parties and perusal of the material on record, I proceed to examine whether the rejection of refund claims is legally sustainable or not. Here it is pertinent to take note of the relevant provisions of the Notification No.27/2012 for alleged violation of which the refund claims have been rejected.

2(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

> *2(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.*

6.2. Further I find that there is no dispute with regard to the export of service and the receipt of foreign exchange. The only ground on which the refund has been rejected is that the closing balance of cenvat credit at the end of the quarter as per ST-3 return was 'nil' which was less than the refund amount for respective quarter. I have examined the ST-3 returns as well as the cenvat credit account furnished by the appellant and as per the cenvat credit amount and has also shown 'nil' in ST-3 returns filed with the Department. Further I find that the objection of the Department that the appellant has not debited the cenvat credit account before filing the refund claim is not factually correct, in fact the appellants have debited the cenvat credit account before filing the refund claim and the same is clearly shown in the ST-3 returns also. Further I find that the respondent while rejecting the refund claims has not properly appreciated the condition/limitation envisaged in paragraphs 2(g) and 2(h) in Notification No.27/2012-CE(NT) dt. 18/06/2012. The said paragraph only provides that the amount of refund claim shall not be more than the amount lies in the cenvat credit account at the end of the quarter for which the claim is filed or at the time of filing of refund claim, whichever is less. This condition has been interpreted out of context by the respondent in the impugned order and the respondent has erred in not appreciating the facts as also the condition envisaged in Notification No.27/2012. The decisions relied upon by the Revenue are not applicable in the facts and circumstances of the case because in those cases, clearly it was held that the assessee did not debit the cenvat credit account before filing the refund claim which is a mandatory condition as per the notification. In view of my discussion above, I set aside the impugned order by allowing the appeals of the appellant.

7. As far as appellant's claim for interest on delayed refund is concerned, the issue has been settled by various decisions cited supra. Hence by following the ratio of the above said decisions, mainly Ranbaxy Laboratories Ltd., wherein the Hon'ble Supreme Court has held that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiry of period of three months from the date of receipt of

application under Section 11B(1) ibid and not from the date of order of refund or Appellate Order allowing such refund, I hold that the appellant is entitled for the interest as per the Apex Court decision in Ranbaxy Laboratories Ltd. (supra)

8. In the result, both the appeals are allowing in above terms.

(Operative portion of the Order was pronounced
in Open Court on **13/10/2020**)

(S.S GARG)
JUDICIAL MEMBER

Raja...