CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21075 of 2019

[Arising out of Order-in-Appeal No. 246/2019 dated 05/09/2019 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

Convance Clinical Development Pvt. Ltd.
No 99/100 6th-7th Floor Prestige Towers
Residency Road
BANGALORE
KARNATAKA
560025

Appellant(s)

VERSUS

Commissioner Of Central Tax, Bengaluru East
BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE
KARNATAKA
560071

Respondent(s)

Appearance:

Shri Sachin Agarwal, Chartered Accountant — For the Appellant

Shri K.B. Nanaiah, Assistant Commissioner(AR) — For the Respondent

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

Final Order No. 20432 /2021

Date of Hearing: 23/03/2021
Date of Decision:02/07/2021

Per : S.S GARG

The present appeal is directed against the impugned order dt. 05/09/2019 passed by the Commissioner(Appeals), Bangalore whereby the Commissioner(Appeals) has rejected the refund claimed by the appellant amounting to Rs.21,24,883/- for the period April 2016 to June 2016 .

2. Briefly the facts of the present case are that the appellant is engaged in providing support services to its group companies located outside India and they are providing the services in the nature of Business Support Services and Business Auxiliary Services. During the course of its operation, appellant received certain input services which were entirely used for providing taxable service exported in terms of Rule 6A of Service Tax Rules, 1994. Since the services provided by the appellant were exported outside India and there was no service tax liability on the output services provided, the cenvat credit availed by the appellant remained unutilized. Appellant being an exporter was entitled to claim unutilized cenvat credit availed during the relevant period and appellant filed claim for refund of cenvat credit availed during the period April 2016 to June 2016 under Rule 5 of Cenvat Credit Rules read with Notification No.27/2012-CE dt. 18.06.2012. Thereafter a show-cause notice was issued to the appellant proposing to reject the refund claim for the reason that the appellant had transitioned the credit for the said period into GST regime and consequently the appellant has not complied with the conditions of the notification. After following the due process, the original authority rejected the refund claim. Aggrieved by the said order, the appellant filed appeal before the Commissioner(Appeals). Commissioner(Appeals) taking the ground that the Order-in-Original has traversed beyond the show-cause notice inasmuch as the ground for rejection did not form part of the show-cause notice and other grounds were also taken; but the Commissioner(Appeals) dismissed the appeal on the ground that the appellant has not adhered to the condition laid down in the Notification. Hence the present appeal.

3. Heard both 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 facts and the law and the documentary evidence submitted by the appellant in support of their claim. He further submitted that the respondent has rejected the refund application on the limited ground that the appellant has not debited the refund claim amount from the cenvat credit and the service tax return at the time of making the refund and such amount has been transferred through TRAN-1 into the GST regime. He further submitted that the appellant has, by inadvertent mistake, transferred the cenvat credit to TRAN-1 form but subsequently on realizing his mistake, the appellant reversed the said credit in GSTR-3B return filed for the month of May 2018. He further submitted that during the service tax audit, the appellant informed the audit party regarding the inadvertent mistake and also submitted the GSTR-3B return in the month of May 2018 in which transferred credit was reversed. He further submitted that reversal of input credit at the time of filing refund claim is more like a procedural requirement and should not be seen as condition precedent for claiming refund in the case of 100% exporter of service. He further submitted that in the absence of any use of credit in the business, the respondent ought to have condoned the mistake on the part of the appellant and allowed the substantial right of the refund to the exporter as laid down in the policy of the Government. He further submitted that it is an admitted fact that the credit so claimed was not utilized by the appellant to pay its output service tax liability. He further submitted that once the appellant has reversed the transitioned credit through GSTR-3B for May, 2018, it is deemed to have been reversed by the appellant for the purpose of refund claim filed for the relevant period. The learned counsel further submitted that it is a settled law that procedural lapse of technical nature should not be allowed to defeat the substantive right of the assessee for claim of the refund. In support of this submission, he relied upon the decision in the case of Mangalore Chemicals & Fertilisers Ltd. Vs. Deputy Commissioner [2002-TIOL-234-SC-CX] wherein the Hon'ble Supreme Court had held that "There are

conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve". Learned counsel also submitted that the impugned order is bad in law as the same traversed beyond the show-cause notice and does not consider the submissions made by the appellant during the course of adjudication proceedings. Learned counsel in his additional submissions filed at the time of argument has taken a ground that the impugned order is factually incorrect to the extent that in Para 9.1 of the impugned order, it has been observed that the assessee has failed to debit the refund amount in cenvat credit account, ST-3 return and Form A at the time of filing the refund claim on 16/06/2017 for the period April 2016 to June 2016 and thereby not complied with the conditions under Notification No.27/2012-CE NT dt. 18/06/2012. The learned counsel submitted that this finding in para 9.1 of the impugned order is factually incorrect and the said finding has been recorded without verification of the facts and the documentation available on record. The learned counsel further submitted that the appellant has duly reversed the amount of refund claim in its cenvat credit account maintained in the books of accounts and thereby has fulfilled the aforesaid condition prescribed in the Notification and the appellant has submitted the screenshot of such cenvat credit reversal in the account which is marked as Exhibit B. Further the learned counsel submitted that as per the Notification No.27/2012, there was no requirement to reverse the credit in the service tax return but the impugned order has wrongly taken that ground. He further submitted that as soon as the appellant realized the inadvertent mistake, he voluntarily reversed such amount of input tax credit from his electronic credit ledger under the GST regime through the return filed in Form GSTR-3B for the month of May 2018. He also submitted a copy of the Form GSTR-3B which is marked as Exhibit E. He also relied upon the following

decisions wherein it has been held that substantive benefit of law should not be denied merely due to procedural lapses.

i. Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner [2002-TIOL-234-SC-CX]
Iii. Alpha Garments Vs. CCE, New Delhi [1996(86) ELT 600 (Tri. Del.)]
iii. AG Export Industries Vs. CCE [2007(212) ELT 421]
iv. BSNL Vs. CCE [2009(14) STR 699]

5. On the other hand, learned AR reiterated the findings in the impugned order.

6. After considering the submissions of both sides and perusal of the material on record, I find that it is not in dispute that the appellant is an exporter and does not have any domestic services at all. Appellant availed input services for the purpose of rendering output service exporting to his foreign company for which he pays service tax and take cenvat credit. Since the appellant was unable to utilize the cenvat credit for payment of its output liability, the appellant filed a refund claim for the period April 2016 to June 2016 which was rejected by the original authority on the ground that appellant has not debited the refund amount in cenvat credit and service tax return and consequently the refund was rejected on the ground that the appellant has transitioned the input tax credit into TRAN-1 and as per Section 142(4), the refund is liable to be rejected once the cenvat credit is transferred to TRAN-1. Further I find that from the documentary evidence on the record, the appellant has proved that he has actually reversed the amount of refund claimed in its cenvat credit account maintained in the books of accounts as prescribed in the Notification before filing the refund claim and Exhibit B clearly shows the reversal of cenvat credit but Commissioner(Appeals) has not appreciated that aspect and has wrongly observed in para 9.1 of the impugned order that the assessee

has failed to debit the refund amount in cenvat account. As per the Notification No.27/2012, there is no requirement to debit in the service return, the only requirement under Condition 2(h) of Notification No.27/2012 dt. 18/06/2012 is that the amount i.e. claimed as refund under Rule 5 of the said Rules shall be debited by claimant from his cenvat credit account at the time of making the claim and this condition has been followed by the appellant before filing the claim of refund but the impugned order has misconstrued and misinterpreted the requirement of Notification No.27/2012. Further I find that appellant by sheer inadvertent mistake has transitioned the cenvat credit into TRAN-1 during the GST regime. As soon as, he realized his bona fide and unintentional mistake and the reversal was done in GSTR-3B returns in May 2018 itself. I also find that during the relevant period, the appellant has not utilized the cenvat credit and it was merely a procedural lapse which was rectified by the appellant on its own and was also informed the Department regarding the subsequent reversal in GSTR-3B filed by the appellant in May 2018. In my view, since the appellant who is a 100% exporter of service and has reversed the credit wrongly taken through GSTR-3B is sufficient to hold that the amount of cenvat credit claimed as refund has not been utilized by the appellant in any manner and has been deemed to have been reversed by the appellant. Learned Commissioner(Appeals) should have taken a liberal view of a bona fide mistake committed by the appellant without any intention to claim unjustified refund. I also find that the impugned order has also travelled beyond the show-cause notice because all the submissions made by the appellant during the adjudication proceedings were not considered by both the authorities below. I also find that the act of inadvertent transition of refund amount to GST regime and voluntarily reversal of such amount made by the appellant has been submitted before the adjudicating authority by the appellant vide his letter dt. 13.05.2018 which is much before the issuance of the adjudication order in October 2018 but the same was not considered by the adjudicating authority.

7. In view of my discussion above and considering the facts and circumstances, I am of the considered opinion that the transition of refund amount into GST regime was merely inadvertent error and the same was made good by the appellant by reversing the credit into GSTR-3B filed in May 2018. Further I hold that the appellant has not violated conditions of the Notification No.27/2012 dt. 18/06/2012. Hence I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced
in Open Court on **02/07/2021**)

(S.S GARG)
JUDICIAL MEMBER

Raja...