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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 85387, 85482 of 2019

(Arising out of Order-in- Appeal No. NGP/EXCUS/000/APPL/249-251/18-19/1981 dated 14.11.2018 passed by the Commissioner of Customs (Appeals), Nagpur)

M/s. NSSL Pvt. Ltd. **.....Appellant**
T/44-45, MIDC Indl. Area
Hingna Road,
Nagpur

Vs.

Commissioner of Central Excise, **.....Respondent**
CGST & central excise,
Nagpur -I

APPEARANCE:

Shri P.V. Sadavarte, Advocate for the appellant
Shri Dilip Shinde, Supdt. (AR) for the respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER No: A/86639-86640/2021

DATE OF HEARING : 03-08-2021
DATE OF DECISION : 03-08-2021

PER: BENCH

Briefly stated, the facts of the case are that the appellant herein is engaged *inter alia,* in the manufacture of Industrial valves, spares parts of valve and components etc., falling under Chapter heading 84, 87 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant availed CENVAT credit facility provided under the erstwhile CENVAT Credit Rules, 2004.

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During the disputed period, the appellant had availed the services namely, GTA, Manpower Supply Agency, legal services, security agency services etc., for its business requirement and was liable to discharge the service tax liability under Reverse Charge Mechanism, in the capacity of recipient of such service. However, the appellant did not discharge the service tax liability during the stipulated time and paid the same into the central government account belatedly. The appellant had reflected the service tax liability under the Reverse Charge Mechanism in the periodic ST-3 return filed by it. The Finance Act, 1994 was repealed and replaced with the GST Act in 2017 and as a consequence, the appellant had filed refund application on 04.06.2018, claiming refund of service tax paid by it under the Reverse Charge Mechanism. The refund applications filed by the appellants were returned by the Jurisdictional service tax authorities on the ground that input tax credit can only be claimed under the GST/CGST Act, 2017 and not otherwise. Feeling aggrieved with the communication dated 12.06.2018 of the Deputy Commissioner, CGST & CX, the appellant had preferred appeals before the Commissioner (Appeals). The appeals filed by the appellants were disposed of vide Order-in-Appeal dated 14.11.2018 (for short, referred to as the "impugned order") in rejecting the appeals of the appellant. Feeling aggrieved with the impugned order, the appellant has preferred these appeals before the Tribunal.

2. Heard both sides and perused the records.

3. I find that the Learned Commissioner (Appeals) has relied upon sub-section 8(a) of Section 142 of the CGST Act, 2017 for rejecting the refund applications filed by the appellant. Insofar as the statutory provisions are concerned, it has been mandated that the assessed/adjudged amount of tax/interest/fine/penalty shall be recovered from the assessee as an arrear of tax under the CGST Act, 2017. In the case in hand, the appellant is not

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falling under the scope and ambit of sub-section 8(a) of Section 142 (supra) inasmuch as no assessment/adjudication orders were passed by the competent authorities in determining the tax liability, which the appellant was required to pay under the erstwhile statute. Rather, the case of the appellant is governed under the provisions of sub-section (3) of Section 144 *ibid.* The relevant statutory provision is extracted herein below:-

> "**142. Miscellaneous transitional provisions** –
>
> (3) every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 **(1 of 1944)**
>
> Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:
>
> Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

4. On reading of the above statutory provision, it transpires that an assessee can file the application, claiming refund of the amount of CENVAT credit after the appointed day and that the said application shall be disposed of by the authorities in accordance with the erstwhile statute. The authorities below

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have not questioned the issue regarding the entitlement of the appellant to the CENVAT credit under the erstwhile CENVAT statute. On careful examination of the statutory provisions, I am of the considered opinion that the refund claims filed by the appellants should merit consideration under the provisions of sub-section (3) of section 142 ibid, and as such, it should be entitled for the benefit of refund of service tax paid by it.

5. In view of the above discussion, I do not find any merits in the impugned order, insofar as it has rejected the refund application filed by the appellant. Accordingly, by setting aside the impugned order, the appeals filed by the appellants are allowed.

(Dictated and pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

//SR