CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No. 40597 of 2020

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-018-20 dated 28.08.2020 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore]

M/s.Circor Flow Technologies India Private Ltd. **Appellant**
SF No.337/2, No.15, Naranapuram Village,
Thennampalayam to Annur Road,
Ponnadampalayam,
Coimbatore 641 659.

Vs.

The Principal Commissioner of GST & Central Excise, **Respondent**
6/7, A.T.D. Street, Race Course Road,
Coimbatore 641 018.

APPEARANCE:

Shri Paul Thangam, Consultant
Shri Aravind Thangam, Consultant
For the Appellant

Ms. K. Komathi, Additional Commissioner (Authorized Representative)
For the Respondent

CORAM :

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

Date of Hearing: 14.12.2021
Date of Decision: 16.12.2021

FINAL ORDER No. 42467 / 2021

The appellants are engaged in the manufacture of valves and were holding registration under Central Excise and Service Tax Commissionerates during the pre-GST regime. They entered into

transactions during January 2017 to June 2017 involving import of software for which service tax was liable to be paid under reverse charge mechanism. They paid the service tax belatedly in March 2019. The said tax was for the services received by them from the foreign service provider for the period January 2017 to June 2017 and the tax was paid under reverse charge mechanism. In terms of Cenvat Credit Rules,2004 as it stood during the relevant period, the appellants were eligible to avail credit of the service tax paid by them. After introduction of GST with effect from 1.7.2017, as appellants could not avail cenvat credit, they filed an application for refund of the amount of which they are eligible for credit. The refund claim was rejected by the adjudicating authority stating that the tax has been voluntarily paid and that no credit is eligible in the GST regime. On appeal filed before the Commissioner (Appeals), the said view was upheld. Hence the appellants are now before the Tribunal.

2. The Ld. Consultants Mr. Paul Thangam and Mr. Aravind Thangam appeared and argued for the appellant. Ld. Consultant submitted that service tax was paid by the appellant voluntarily under self-assessment. Such tax paid under reverse charge mechanism is eligible under the Cenvat Credit Rules. The document to claim credit of tax paid under reverse charge mechanism was provided under rule 9 (1) (e) of CCR 2004 which says that challan evidencing payment of service tax, by the service recipient as the person liable to service tax is the prescribed document. The appellant has paid the service tax vide challan deposit dated 16.03.2019 after the introduction of GST. Appellant could not avail

credit for the reason that cenvat account ceased to exist w.e.f. 1.7.2017. The department has denied the refund stating that no credit is eligible under GST regime.

3. Ld. Consultant adverted to Repeal and Savings Provision in Section 174 (2) of the GST Act which reads as under :

> *"The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994.) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-*
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> *(a) revive anything not in force or existing at the time of such amendment or repeal; or*
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> *(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*
>
> *(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts;"*

4. As per clause (c) above, the right of credit is protected even though provisions for payment of Central Excise / Service Tax has been repealed. Further in Section 142 (3) of the GST Act, it provides as under :

> *"(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.)"*

The above section is non-obstante clause and therefore refund has to be processed under the erstwhile law and allowed to be dispersed in cash.

5. The view taken by the adjudicating is without any fairness as they have accepted the delayed payment of tax made voluntarily by the appellant. The appellant had paid the tax along with interest also. When the liability of tax has been accepted by the department, they cannot reject the claim of refund of credit on the same.

6. He adverted to para 2.2. of the OIO and submitted that the jurisdictional Range Officer has reported that the appellant had paid the amount of tax correctly and that prior to the GST regime, it would have been adjusted to the credit. Ld. Consultant relied upon the decisions in the case of *Bannari Aman Sugars* – 2019 (9) TMI 578 CESTAT Bangalore and *NRK Homes Pvt. Ltd*. – 2020 (4) TMI 344 -CESTAT New Delhi. The decision in the case of *Terex India Private Ltd*. - 2021 (10) TMI 531 - CESTAT Chennai vide Final order No.42366/2021 dt. 11.10.2021 is also relied. He prayed to allow the appeal.

7. Ld. A.R Ms. K. Komathi appeared for Revenue and supported the findings in the impugned order.

8. Heard both sides.

9. From the facts narrated above, it is brought out that appellant has paid the service tax voluntarily under self-assessment. The tax is paid under reverse charge mechanism for the services received by them from foreign service provider. On perusal of para 6.4 of the OIO, it is seen that the adjudicating authority has denied refund of credit holding that the service tax has been paid voluntarily and also that no credit is available in GST regime. Section 174 (2) of the GST Act has already been

reproduced as above. It says that the amended Act shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts. It is clear that the liability, if any, under the erstwhile law of Finance Act, 1994 to pay service tax would continue even after the introduction of GST. Conversely, the right accrued under the said Act in the nature of credit available under CCR 2004 also is protected. If the assessee has to pay service tax even after the introduction of GST, their right to avail the credit on the same cannot be denied.

10. In the case of *Adfert Technologies Pvt. Ltd. Vs UOI* - 2020 (32) GSTL 726 (P&H) it has been held that transitional credit being a vested right, it cannot be taken away on procedural or technical grounds. The said order was upheld by the Hon'ble Supreme Court as reported in 2020 (34) GSTL J138 (SC). The Hon'ble jurisdictional High Court in the case of *Tara Exports Vs UOI* - 2019 (20) GSTL 321 (Mad.) has held that GST laws contemplate seamless flow of tax credits on all eligible inputs. In various decisions, it has been held that substantive right of credit cannot be denied on account of procedural grounds. In the case of *Leo Prime Comp. Pvt. Ltd. Vs Dy. Commissioner of Central Excise Puducherry* 2020 (373) ELT 820 (Mad.), it was held that accumulated credit cannot be said to get lapsed.

11. Section 142 (3) of GST Act provides how to deal with claims of refund of service tax of tax and duty / credit under the erstwhile law. It is stated that therein that such claims have to be disposed

in accordance with the provisions of existing law and any amount eventually accruing has to be paid in cash.

12. In the present case, there is no allegation that the credit is not eligible to the appellant. It is merely stated that tax has been paid voluntarily and therefore credit is not available under the GST regime. Though credit is not available as Input Tax Credit under GST law, the credit under the erstwhile Cenvat Credit Rules is eligible to the appellant. Such credit has to be processed under Section 142 (3) of GST Act, 2017 and refunded in cash to the assessee.

13. From the discussions made above, the principles laid down in the decisions cited above, I am of the view that rejection of refund claim cannot be justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Pronounced in open court on 16.12.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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