CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 50807/2021

[Arising out of Order-in-Appeal No. 41/20220-21 dated 31.3.2021 passed by the Commissioner of Central Tax (Appeals II) Central Goods and Service Tax, New Delhi]

LIGHTSPEED INDIA PARTNERS ADVISORS LLP — **APPELLANT**

Vs.

COMMISSIONER CENTRAL TAX (APPEALS) NEW DELHI — **RESPONDENT**

APPEARANCE:

Shri Sivarajan, Chartered Accountant with Shri Prashant Gupta for the Appellant
Ms Tamana Alam, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: December 01, 2021

FINAL ORDER No. 52063 /2021

PER RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Appeal No. 41/20220-21 dated 31.3.2021. The relevant facts in brief are as follows:

The appellant is engaged in export of Management and Business Consultancy Service. Three refunds claims were filed by

the appellant on 26.2.2018 with respect to unutilised credit for the three different periods, i.e.

(i) for the period October, 2016 to December, 2016 for an amount of Rs.9,49,691/- and

(ii) for the period January 17 to March 2017 for an amount of Rs.6,15,352/- and

(iii) for the period April 17 to June 17 for an amount of Rs.10,52,387/-.

The refund claim of October, 2016 to December, 2016 were rejected as being barred by time. Vide Order-in-Original No. 08-10 3147/2020-21 dated 29.7.2020, the same order itself rejected the remaining two other claims on the ground of non-compliance of the provisions of Para 2 (h) of Notification No. 27/2012 dated 18.6.2012. The appeal against the said order-in-original has been rejected vide the order under challenge. Still being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Sivarajan with Shri Prashant Gupta, learned Chartered Accountants for the Appellant and Ms Tamana Alam, learned Authorised Representative for the Department.

3. Learned counsel for the appellant has submitted that the appellant has reversed the credit in their accounts on 23.2.2018. The credit was for the pre GST era. With effect from 1.7.2017 when the new GST law came into effect, the credit of erstwhile period, the reversal thereof, was shown in the appellants own records on 23.2.2018 and the refund thereof was filed on 25.2.2018. It is submitted that the Commissioner (Appeals) has

quoted section 142 of GST Act but has failed to properly apply the same to the facts of the present case. The proviso thereof has totally been ignored. The findings of the Commissioner (Appeals) are liable to be set aside on this ground alone. It is submitted that Chartered Accountant certificate has also been produced by the appellant certifying that the amount of CENVAT credit amount has been reversed in the books of accounts. The ignorance of said document is also another ground for the order in question to be set aside. It is further impressed upon that the notification of 18.6.2012 as was issued under Rule 5 of CENVAT credit Rules, 2004 was applicable if and only if the amount, the refund whereof as been claimed, could have been debited to the electronic ledger but the amount being the amount lying during transitional period since was not transferred to the electronic ledger, but was shown as amount reversed in the accounts of appellant. The same is statutorily permissible in terms of section 142 of GST law. Hence, rejecting the claim for want of compliance of clause (h) of said notification, the ignorance of changes of the transitional phase, Commissioner (Appeals) is mentioned to have committed an error. Order under challenge is therefore, prayed to be set aside. Learned Counsel lays emphasis on the following case laws:

1. **CCE, Pune III vs Bora Agro Foods [2015 (11) TMI 1338-CESTAT Mum];**

2. **M/s. Thorogood Associates India Pvt Ltd. vs CCT, Bangalore, Karnataka [2021-TIOL-484-CESTAT-Bang]**

3. **Inguest Technologies Software (P) Ltd. vs. Commissioner of Central Tax, Bangalore [2019 106 taxmann.com. 298]**

Accordingly, appeal is prayed to be allowed.

4. Per contra learned Authorised Representative for the Department has relied upon the findings of the Order under challenge specifically in paragraph No. 5.10 where Commissioner (Appeals) has dully considered about the reversal of the credit by the appellants in his books of accounts to not merely a procedural issue but to be the substantive non compliance of Notification No. 27/2012 dated 18.6.2012, the non compliance whereof has invited the rejection. It is held by the Commissioner (Appeals) that the notification whose benefit has to be taken, the condition thereof are to be strictly complied upon. Hence, there is no infirmity in the order under challenge. The appeal is accordingly prayed to be dismissed.

5. After hearing the parties and perusing the entire record, I observe and held as follows:

In the present case, the appellant had accumulated Cenvat Credit with respect to the Management and Business Consulting services being exported by him. However, during the period prior the CGST Act, 2017 came into effect, the said credit has apparently not been debited by the appellant, but has been reversed in the Books of accounts of the appellant. Sole controversy is as to:

> "Whether the said reversal in the Books of Accounts instead of transfer of the said amount to the electronic ledger is a valid reversal or not. "

Formost it is to be checked as to whether the Books of accounts of the appellants / private record can be considered as

record admissible into evidence or as to whether it is statutory document. I observe that Hon'ble Madras in the case of **BNP Paribas Global Securities Operations Pvt Ltd. vs. The Assistant Commissioner of GST and Central Excise** reported in **[2021 (4) TMI 783]** has held that for the transaction pertaining to the period prior to 30.6.2017, the assessee since could not file the ST 3 return post July, 2017, any reversal/ credit shown in his private accounts/ the Books of accounts become the statutory documents as admissible in evidence. Further perusal of this decision shows that the facts of the said case were identical to that of present one in the terms that the appellants in both the cases are exporter of the services. Hon'ble High Court had held that refund of Cenvat Credit to such an exporter of services in terms of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012 date 18.6.2012 is the denial of legitimate export incentive coming to the exporter of services. Same cannot be denied merely because of intervening changes. Commissioner (Appeals) has denied the refund of such incentive laying emphasis not merely upon the Notification of 18.6.2017 but also on the non-compliance thereof also in terms of Section 142 of CGST Act. Section 142 of said Act relevant sub section 4 reads as follows:

> "(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:
>
> **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."

6. The perusal of this provisions makes it abundantly clear that refund of any duty or tax which was paid for the period prior to coming into force of the GST law can be claimed even after the appointed date of 01.07.2017. The provision itself makes it clear that such claim is to be dealt with in terms of earlier existing law. The first proviso of this section though talks about the amount lying to be have lapsed but what has been mentioned to be lapsed will be rejected amount of refund not on the ground of coming into effect of a new law but on the ground of ineligible refund. Apparently and admittedly. there is no reason showing that the refund was otherwise not available to the appellant. Second proviso of this provision is abundantly clear that the amount which stand entered otherwise on the appointed date, refund thereof shall not be allowed. These observations about section 142 of the GST Act, to my opinion, are sufficient to hold that Commissioner (Appeals) has failed to appreciate the provisions as a whole and has wrongly held that in terms of section 142 the impugned refund was not allowed.

7. Coming to the Rule 15 of Cenvat Credit Rules 2017 which has also been emphasised as a ground for rejecting the claim, it is observed that no doubt this Rule mandates the transfer of entire Cenvat Credit available under Cenvat Credit Rules, 2004 relating to the period ending the date immediately preceding the date of 01.07.2017 in the electronic credit ledger but Rule itself talks about the compliance of Chapter XX of GST Act, 2017 for making such

transfer. The said chapter and the transition provision includes section 142 CGST as has been discussed above.

Once that is so, I do not find any illegality in the Act of the appellant who has reversed the Cenvat Credit of the period pertaining to the existing law to his Books of Accounts instead of transferring the same to electronic credit ledger.

8. I also observe that the Commissioner (Appeals) has miserably failed to observe that with the introduction of the GST Act filing of ST-3 return was absolutely done away due to which there was no other possible way with the appellant to debit and to reflect the existing credit in its ST-3 return. The Notification No. 27/2012 dated 18.6.2012 with its condition No 2(h), to my opinion, was applicable only during the period prior to GST regime. Since the GST regime has done away with the ST 3 return, there remain no provision in GST system to reflect the refund claim in the CENVAT credit balance. The only option was to show its reversal in the Books of accounts. Such reversal still amounts to non availment of Credit and refund whereof remains eligible. I draw my support from the decisions in the case of **Commissioner of Service Tax, NOIDA vs M/s. Kiwi Technologies India Pvt Ltd. [2018 (2) TMI 689 CESTAT, Allahabad]**. Tribunal Bangalore also in the case of **M/s. Thorogood Associates India Pvt Ltd. vs CCT, Bangalore, Karnataka** (supra) has held as under:

> "6. .....Further, I find that when the appellant filed the refund claim in February 2018, by that time, the erstwhile Service Tax Regime was repealed with GST Regime and the refund claim was filed under Rule 5 of CENVAT Credit Rules, 2004 and there was no occasion to debit the CENVAT credit account and reflect the same in ST-3 Returns as the company by that time was filing GST Returns under GST law. I also find that appellant had

> not transitioned the said credit to GST Regime and has submitted the proof for not transitioned the credit to GST Regime. ……"

9. In the present case, the reversal was shown in the Books of Accounts prior to filing of refund claim, there seems no reason, in my opinion, for rejection of such a claim. Tribunal -Bangalore in another case of **Inguest Technologies Software (P) Ltd.** (supra) has allowed the refund clam of such transitional period when the reversal from Books of accounts was shown even after filing of refund. Keeping in view the entire above discussion, the rejection of two refund claims for the period January, 2017 to March 2017 and April, 2017 are held to have wrongly been rejected.

10. In view of the above discussions, the order under challenge is hereby set aside. The appeal is accordingly allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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