

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Service Tax Appeal No. 50811 of 2020-SM**

(Arising out of order-in-appeal No. 27(SM)/ST/JPR/2020 dated 31.01.2020 passed by the Commissioner (Appeals), Central Excise, Central Goods & Service Tax, Jaipur).

**Punjab National Bank**

Circle Office, PNB House  
02, Nehru Place, Tonk Road  
Jaipur, Rajasthan.

**Appellant**

VERSUS

**Commissioner, Central Goods and  
Service Tax, Central Excise,**

NCR Building, Statue Circle  
C-Scheme, Jaipur, Rajasthan.

**Respondent**

**APPEARANCE:**

Sh. Anurag Basu, C. A. for the appellant

Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 50414/2022**

**DATE OF HEARING/DECISION: 04.05.2022**

**ANIL CHOUDHARY:**

The appellant is a scheduled commercial bank and they were registered under the provisions of service tax and were paying service tax under various heads like Banking and Financial Services, Business Auxiliary Service etc., for the period ended on 30.06.2017. The appellant filed their return in form ST-3 on 14.08.2017. The appellant also filed their form TRAN-1 for transfer of unutilised cenvat credit to the GST regime for Rs.5,38,330/- on the same date. Thereafter, the appellant noticed some mistake of omission in taking

the cenvat credit due to late receipt of some invoices of input service. Thus, the appellant took cenvat credit and filed revised return in Form ST-3 for the period ended 30.06.2017, which was filed on 21.09.2017 and the additional cenvat credit arising due to the omission was Rs.1,18,237/-.

2. Due to implementation of GST regime w.e.f. 01.07.2017, the appellant already filed their claim for transfer of credit in form TRAN-1, the same could not have been revised and this additional cenvat credit of Rs.1,18,237/- could not be taken to GST regime. In the circumstances, as permissible under Section 142(9)(b) of CGST Act, 2017, the appellant filed their refund claim on 15.11.2018 for refund of the said amount of Rs.1,18,237/-. The said refund claim was rejected pursuant to hearing the appellant, on contest the refund was rejected on the ground of time bar, observing that the refund should have been claimed within a period of twelve months from 21.09.2017 being the date of filing of revised return. It was also observed that the appellant has not submitted any evidence to prove that the incidence of tax of which refund has been claimed has not been passed on by them to any other person.

3. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals) who vide the impugned order rejected the appeal agreeing with the finding of the Court below.

4. Being aggrieved, the appellant preferred appeal before this Tribunal.

5. Learned Counsel for the appellant inter alia urges that from a plain reading of the provisions of Section 142(9)(b) of the CGST Act, it is evident that refund arising after filing of Form TRAN-1, where any return, furnished under the existing law (Service tax) is revised after the appointed, day but within the time limit specified for such revision under the existing law, and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act, i.e. CGST Act.

6. It is further urged that from a plain reading of the aforementioned provisions it is evident that there is no limitation prescribed for claiming refund due, arising after the appointed day. The only requirement under sub-section (2) of Section 11B of the Central Excise Act is satisfaction of unjust enrichment.

7. Learned Counsel further urges that in the facts of the case that the credit had been rightly taken by filing revised return on 21.09.2017 (after the appointed day). Thus, there is no scope to pass on any liability under service tax provision at the relevant time. Admittedly, the appellant have taken cenvat credit on some of the invoices, which has been escaped from the notice. Accordingly, he prays for allowing their appeal with consequential benefits.

8. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

9. Having considered the rival contentions, I find that there is no controversy regarding the quantum of amount refundable. Further, there is no allegation nor any finding by the Court below with regard to unjust enrichment. Further, in the facts and circumstances, I find that there is no scope to transfer any service tax liability as the credit has been taken after the appointed day and also filing of Form TRAN-1. I further hold that no time limit is prescribed under the transition provision of Section 142(9)(b) of the CGST Act, for claim and grant of refund.

10. Accordingly, in view of my finding, this appeal is allowed and the impugned order is set aside. The appellant is entitled to refund of the said amount of Rs. 1,18,237/-. The Adjudicating Authority is directed to disburse the refund of the said amount within a period of (60) sixty days from the date of receipt of this order alongwith interest under Section 11BB of the Central Excise Act.

11. In the result, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)  
Member (Judicial)