CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL Nos.41190 to 41196 of 2017

(Arising out of Order-in-Appeal Nos.43,44,45,46,47,48 & 49/2017 (STA) dt. 20.02.2017 passed by the Commissioner of Service Tax (Appeals-I), Chennai)

M/s.Vestas Technology R&D Chennai Private Ltd. **Appellant**
Block A, 8th Floor, TECCI Park,
173, Rajiv Gandhi Salai (OMR)
Sholinganallur,
Chennai 600 119

VERSUS

The Commissioner of GST & CE **Respondent**
Chennai South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam,
Chennai 600 035.

APPEARANCE :

Shri K. Sivarajan, Consultant, Advocate
For the Appellant

Shri Vikas Jhajharia, AC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)

DATE OF HEARING : 09.06.2022
DATE OF PRNOUNCEMENT :13.06.2022

FINAL ORDER No. 40228-40234 / 2022

PER: P. ANJANI KUMAR

The appellants M/s. Vestas Technology R&D Chennai Pvt. Ltd. are engaged in export of services like Consulting Engineering, Maintenance and Repair and Business Support Services. They have availed Cenvat credit on various inputs services. As they could not utilize the accumulated Cenvat credit they have been filing quarterly refund claims under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27/2012–CE (NT) dt. 18.06.2012. The department was of the opinion that the refund claims filed by the appellants for the period April 2012 to December 2013 are hit by limitation and they are liable to be rejected on the ground that they have been filed beyond one year of date of invoice. Show Cause Notices were accordingly issued. The original authority has confirmed the allegations in the show cause notice and rejected the refund claims. The appellate authority, vide Orders-in-Appeal No.43-49/2017 dated 20.02.2017, has upheld such rejection. The learned Commissioner (Appeals) has relied upon *CCE Coimbatore Vs GTN Engineering (I) Ltd*. - 2012 (281) ELT 185 (Mad.) and *CC Bangalore Vs Spice Telecom* - 2006 (203) ELT 538 (SC).

2. Shri K. Sivarajan, Learned Consultant submits that the decision in GTN Engineering deals with export of goods and not with export of services. He relies on the following cases:

(a) KKSK Leather Processors (P) Ltd. Vs CCE & ST Salem 2014 (35) STR 956 (Tri-Chennai)
(b) CC Goa Vs Ratio Pharma India Pvt. Ltd. (Appeal No.ST/598/2012-Mumbai)

2.1 He further submits that the relevant date under Section 11B would be the date of realization of export proceeds. He relies on the following:

(a) Hyundai Motor India Engineering Pvt Ltd - 2015-TIOL-739-HC-AP ST
(b) Circular 1/2010 dated 13th April 2010
(c) Rule 5 of the CENVAT Credit Rules, 2004
(d) Notification NO.05/2006-Central Excise (N.T) dated 14 March 2006.
(e) AAM Services India Private Limited Vs Commissioner of Central Excise, Pune-III 2015-TIOL-1911-CESTAT-MUM
(f) M/s. K. Bit Brave Sourcing Pvt. Ltd. Vs Commissioner of GST & Central Excise Chennai; 2018 (9) TMI 915 – Chennai CESTAT

2.2 He further submits that the limitation reckons from the end of the quarter in which the proceeds of export have been realized as held in the following cases:

(a) M/s.GE Drilling Engineering Services of India Pvt. Ltd. Vs The Commissioner of GST & CE – 2019 (8) TMI 1025 – Chennai CESTAT
(b) M/s.Suretax Prophylactics India Pvt. Ltd. Vs Commissioner of Central Excise, Customs and Service Tax - 2020-TIOL-917-HC-KAR-CX.
(c) CCE & Service Tax Vs M/s.Span Infotech India Private Limited - 2018-TIOL-516-CESTAT-Bang-LB

3. Learned Consultant further submits that vide Notification No.27/2012-CE (NT) dated 18.06.2012 the relevant date for export of services has been prescribed. The same was held to have retrospective effect as held by the jurisdictional High Court in W.P.No.5941 & 6018 of 2018 filed by *Doosan Infracore India Private Ltd. Vs Assistant*

Commissioner. He also submits that a beneficial notification should be construed liberally in view of *Union of India Vs Suksha International & Nutan Gems and Another* - 1989 (39) ELT 503 (SC) and *CCE Vs Ford India Pvt Ltd* – 2016-TIOL-31-SC-CX-LB. He further submits that substantial benefit should not be denied due to non-fulfilment of procedural conditions as held by the Hon'ble Apex Court in *Mangalore Chemicals & Fertilizers Ltd. Vs Deputy Commissioner* - 1991 (55) ELT 437 (SC). He lastly submits that Section 11B is not applicable for export of services as held in *m-Portal India Wireless Solutions Pvt. Ltd. Vs CST, Bangalore* - 2012 (27) STR 134 and *J-Ray Mcdermott Engineering Services Pvt. Ltd. Vs CST Chennai* 2016 VIL 326 CESTAT CHE ST.

4. Shri Vikas Jhajharia, Learned Authorized Representative of the Department reiterates the findings of the OIA.

5. Heard both sides and perused the records of the case. On-going through the facts of the case, records and the various judgements cited by the appellants, we find that in principle the issue of limitation or time bar in the impugned order stands settled in favour of the appellants in view of the Larger Bench decision in the case of *M/s. Span Infotech India Pvt Ltd* (supra) and other cases. We find that Larger Bench of the Tribunal has held as follows in the case of *M/s. Span Infotech India Pvt. Ltd:*

> **"10.** After considering the provisions of the notifications issued under Rule 5 of the CCR, we note that there is a specific condition that the refund claims are required to be filed within the period specified under Section 11B. Consequently, we are of the view that completely ignoring the provisions of Section 11B may not be appropriate. This view is supported by the decision of Hon'ble Madras High Court in the case of *GTN Engineering* (supra)

wherein Hon'ble High Court has disagreed with the view expressed by Hon'ble Karnataka High Court in the case of *mPortal* (supra) that Section 11B will have no application with respect to refund under Rule 5 of CCR.

11. The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give its meaning such that the objective of the provisions; i.e. to grant refund of unutilized Cenvat credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Services Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh High Court has held that the date of receipt of consideration may be taken as relevant date in the case of *Hyundai Motors* [2015 (39) S.T.R. 984 (A.P.)].

12. The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of *Sitel India Ltd.* (supra), has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.

13. Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No. 27/2012, w.e.f. 1-3-2016. Essentially, after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of *Vatika Township* (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis."

6. However, during the course of hearing learned consultant for the appellants could not produce documents to prove that the claims filed by the appellants were in time as enunciated by the larger Bench as discussed above, Thus, it was not possible for us to verify the claim of

the appellants that the respective refund applications have been filed within one year of realization of the export proceeds in the relevant quarter. Under such circumstances, we are of the considered opinion that this Bench will not be in a position to decide whether or not the different claims filed by the appellants are covered by the decision of the Larger Bench in the case of *M/s. Span Infotech* (supra). For the limited purpose of verification of the relevant dates of realization of export proceeds and the dates of filing of the refund claims, the matter should go back to the original authority to verify the same and to grant applicable refund to the appellants in the light of the principle laid down by the Larger Bench in the case of *M/s. Span Infotech* (supra). Accordingly, we are inclined to remit the matter to the original authority for verification keeping in view our findings and observations as above.

7. In the result, the appeals are allowed by way of remand to the original authority. It is directed that the appellants shall produce the relevant documents/records, they wish to rely upon, before the original authority within four weeks of receipt of this order. The original authority shall dispose of the claims within further period of 12 weeks, as far as it may be practicable, of the receipt of said documents from the appellants.

(Pronounced in Court on 13.06.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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