

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50763 of 2021-SM

(Arising out of order-in-appeal No. 09/ST/DLH/2021 dated 03.02.2021 passed by the Commissioner (Appeals-I), Central Tax, Goods & Service Tax and Central Excise, Delhi).

M/s Quadrax Growth Pvt. Limited

(Formerly M/s Eli Business Solutions Pvt. Ltd.,)

Unit – 805A, B, C and

Unit 4th Floor, D-40, Old No. D-15

Acharya Niketan, Mayur Vihar, Phase-I

East Delhi, New Delhi-110091.

Appellant

VERSUS

**Commissioner of Central Goods and
Service Tax**

Room No. 134, C. R. Building

I. P. Estate, New Delhi-110002.

Respondent

APPEARANCE:

Ms. Nidhi Dhamija, C. A. for the appellant

Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50643/2022

DATE OF HEARING/DECISION: 19.07.2022

ANIL CHOUDHARY:

Heard the parties.

2. The only issue involved in this appeal is whether the refund claim of the appellant under Rule 5 of Cenvat Credit Rules read with Notification No. 27/2012-CE (NT), whether the same has been rightly rejected on the ground that the appellant did not debit the

amount of refund claim in their cenvat credit record/ ledger at the time of filing refund claim, under the admitted fact that such debit was made later on under intimation to Revenue before adjudication of the claim.

3. Brief facts of the case are that the appellant is the exporter of taxable services. For rendering such output services they have received various input services, on which they paid service tax and have taken cenvat credit being entitled to the same. The appellant could not utilise such cenvat credit as the export of service made by them was not taxable. The appellant preferred refund claim for the period October, 2016 to December, 2016 in terms of Rule 5 of Cenvat Credit Rules read with Notification No. 27/2012-CE (NT) for an amount of Rs. 10,16,966/-.

4. Pursuant to filing of the refund claim, Revenue issued show cause notice proposing to reject the refund on the ground that Condition No. 2(h) of the Notification No. 27/2012-CE (NT) dated 18.06.2012 provides that the amount claimed as refund should have been debited at the time of filing refund claim in the relevant record. The Adjudicating Authority took notice of the reply of the appellant wherein they have mentioned that the said amount has been reversed subsequently on 23.06.2020 and the same is supported by the certificate of Chartered Accountant, which also certifies that appellant has not carried forward the cenvat credit to GST regime. The Assistant Commissioner adjudicated the refund claim and rejected the refund only on the ground that appellant failed to debit the amount

claimed as refund in the cenvat record at the time of filing refund claim.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who also upheld the rejection of refund claim, relying on the ruling of coordinate Bench of this Tribunal in the case of **Apex Co. Vantage India Pvt. Ltd., vs. CCT**, being Final Order No. A/30635 -30637/2018 dated 14.06.2018. In the said ruling, this Tribunal have held that the Rule does not provide the flexibility to the officers or the Tribunal to relax condition 2(h) of the said notification.

6. Being aggrieved, the appellant is before this Tribunal.

7. Learned Counsel Ms. Nidhi Dhamija, C. A. for the appellant have inter alia urged that it is admitted fact that the appellant have debited the claimed refund subsequently on 23.06.2020 and in support thereof submitted the copy of cenvat register/ledger duly supported by certificate of the Chartered Accountant, which have been annexed in the appeal paper book.

7.1 Learned Counsel further relies on the ruling of this Tribunal in the case of **Porteck India vs. Commissioner of Central Goods & Service tax and Central Excise, New Delhi – 2021 (10) TMI 704-CESTAT, New Delhi**, whereby a co-ordinate Bench (presided by me) have held following the ruling of Hon'ble Supreme Court in the case of **CCE vs. M/s Hari Chand Shri Gopal - 2010 (260) ELT 3 (SC)** that the doctrine of substantial compliance was explained stating that it is a judicial invention, equitable in nature,

designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects, which cannot be described as the "essence" or the "substance" of the requirements. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute". The determination to be made is whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. The condition of the impugned notification, that the amount claimed as refund shall be debited by the claimant from his cenvat credit account at the time of making the claim, is a substantive one and accordingly prays for allowing the appeal with consequential benefits.

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

9. Having considered the rival contentions, I hold that the debit of the amount of refund claim in the cenvat credit account suo moto before the adjudication, is sufficient compliance of Condition No. 2(h) of the Notification No.27/2012-CE. Further relying on the ruling of the Hon'ble Supreme Court in the case of **Hari Chand Shri Gopal & Ors.** (supra), I further hold that the Commissioner (Appeals) have mis-conceived and mis-directed himself by ignoring the ruling of the Hon'ble Supreme Court, which is both judicial indiscipline and also in violation of Article 141 of the Constitution of India.

10. Accordingly, the appeal is allowed and the impugned order is set aside. Further, the Adjudicating Authority is directed to grant refund within a period of 45 days from the date of receipt of this order along with interest as per Rules (starting from the end of 3 months from the date of filing of the refund claim till the date of grant of refund claim).

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant