CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. II

Service Tax Appeal No. 30105 of 2020

(Arising out of Order-in-Appeal No. GUN-EXCUS-000-APP-061-19-20 dated 09.09.2019 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur.).

M/s Lupin Limited **Appellant**
3rd Floor, Kalpataru Inspire,
Off, W E Highway, Santacruz (East)
Mumbai, Maharashtra-400055

VERSUS

Commissioner of Central Tax & Customs (Appeals), Guntur **Respondent**
C.R. Buildings,
Kannvarithota
Guntur, Andhar Pradesh-522004

APPEARANCE:
Shri Bharat Raichandani & Shri Rishab Jain, Advocates for the appellant
Shri A.V.L.N. Chary, Authorised Representative for the respondent

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30019/2023

DATE OF HEARING: 14.09.2022
DATE OF DECISION: 16.03.2023

ANIL CHOUDHARY:

The issue in this appeal relates to rejection of refund claims. The appellant had claimed the following refunds which have been decided by the court below:

A. (i) Krishi Kalyan Cess paid on services received for manufacture of goods, namely transportation of goods, Manpower supply-recruitment, maintenance and repair service, technical testing analysis service totalling Rs. 5,46,759/-.

(ii) It has been held that the appellant is not entitled to transmit the amount of Krishi Kalyan Cess (KKC)to GST regime. The credit of the said cess was meant to be utilised only towards payment of KKC on output taxable service. Thus, refund is not permissible.

B. (iii) Service tax paid on input services received for manufacture of goods namely transportation of goods, man power supply-recruitment, goods maintenance and repair service, etc. Rs. 7,86,359/-.

(iv) It has been held, as appellant is not providing any taxable output service and is a manufacturer paying exciaw duty, they are not entitled to avail credit of tax paid on input service. Further, held credit availed is irregular as appellant cannot utilise the same for discharge of Central Excise duty, through ST-3 return.

C. (v) Credit taken on imported goods at Rs. 11,66,539/- being credit taken on the basis of bill of entry and service tax paid on reverse charge basis on input services, which the appellant missed out to take credit in the ER-1 Return for June, 2017. Held, here is no such remedy under law to utilise such credit or to get refund. Further observed, had the Central Excise Law continued, the appellant could have utilised such credit.

(vi) As regards, the issue, that it was not proposed in the SCN to disallow refund of KKC, but as denial of Cenvat credit have been proposed in general, will cover also disallowance of KKC.

2. Learned Counsel, Mr. Bharat Raichandani assailing the impugned order inter alia urges-under Rule 3(1) of CCR, 2004, an assessee-a manufacture can avail Cenvat credit and utilise the same towards payment of either Central Excise duty and/or service tax. The Cenvat Credit Rules permit availment and utilisation of Cenvat credit under a

common pool and there is no restriction placed to the effect that Cenvat credit balances should be maintained separately for manufacture of excisable goods and for use in provision of services. In other words, cross utilisation of Cenvat credit is permissible. Reliance is placed on precedent Ruling of the Tribunal in **Laxmi Technology and Engineering Industries 2011 (2) TMI (1275) (Tri-Chennai)**. Similar views taken by the Mumbai Bench **in SS Engineers 2013 (10) TMI 611)** which have been confirmed by Hon'ble Bombay High Court reported at 2016 (4) TMI 108.

3. It is further urged that the incremental amount of Cenvat credit as per 'revised return', can be specifically claimed a refund under Section 142 (9) (b) of CGST Act. The amounts claimed as refund under dispute, have been taken credit after 30.06.2017, as reflected in the revised ST-3 return. Accordingly, contention of the court below that appellant could have filed revised GST TRAN-1 for the credit under dispute is not tenable as additional credit availed in revised return cannot be transitioned vide GST TRAN-1.

4. Further, attention is drawn to second edition on FAQs on GST released by the Board, which deals with transitional provisions wherein question no. 20 reads as- How shall the refund arising from revision of return (s) furnished the existing law, be dealt in GST?

Ans. Any amount found to be refundable as a consequence of revision of any return under the existing law after the appointed day will be refunded in cash under Section 142 (9) (b) of CGST Act.

5. It is further urged that rejection of Cenvat credit without invocation of Rule 14 of CCR in the SCN is bad, as no Cenvat credit can

be rejected without invocation of Rule 14 of CCR, which is the enabling provision.

6. Learned AR for revenue relies on the impugned order. He further urges that Cenvat credit was required to be taken within one year from the date of invoice, as such disallowance of Rs. 4,15,012/- with respect to invoice no. 6559 dated 23/12/2015 and no. 6660 dated31/12/2015 and bill of entry no. 3729938 dated 28/03/2015 totalling Rs. 4,15,012/- is just and proper, as the credit have been admittedly taken after one year from the date of invoice/ bill of entry.

7. Learned AR further urges that in view of recent ruling of Hon'ble Supreme Court in **Union of India vs. Filco Trade Centre Pvt Ltd**., vide order dated July 2022, reported at 2022-TIOL-57-SC-GST, the Hon'ble Court have directed to open the GST Portal for a period of two months for availing transitional credit through filing of TRAN-1 and TRAN-2. Board have also issued Cir. No. 180/12/2022-GST dated 09.09.2022, accordingly. Hence, appellant instead of claiming refund can claim transition accordingly.

8. Having considered the rival contentions, we reject the amount of refund for KKC Rs. 5,46,759/-, following the ruling of larger bench in the case of **Gauri Plastic Culture Pvt Ltd. [2019-TIOL-1248-H.C.-Mumbai-C.Ex-LB]** wherein it was held that a non-utilised portion of Cenvat credit cannot be claimed as refund in cash, distinguishing the ruling in **Union of India vs. Slovok India Trading Company,** as not a declaration of law under Article 141 of the Constitution.

8.1 So far the amount of Rs. 4,15,012/- is concerned, the rejection of the same is upheld as admittedly credit was taken beyond a period of 12 months from the date of invoice/bill of entry.

8.2. So far the balance amount of refund is concerned, we hold that the appellant have rightly taken credit in view of Rule 2(l) of CCR which entitles a manufacturer to claim Cenvat credit on input services utilise in manufacture of dutiable taxable goods.

9. We further hold that there is no bar in cross utilisation of Cenvat credit once taken, either for payment of Central Excise duty or service tax, in view of the provisions of Rule 3 or 4 of CCR.

10. Accordingly, we allow the appeal in part and direct the Adjudicating Authority to grant refund of the balance amount of Rs. 15,37,886/- (24,99,657(-)5,46,759(-)4,15,012). Such refund should be granted to the appellant within a period of 60 days from the date of service of copy of this order, alongwith interest as per rules.

(order pronounced in open Court on 16.03.2023)

(Anil Choudhary)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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