CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : Division Bench 2

Service Tax Appeal Nos. 41386 to 41393 of 2017-DB

(Arising out of Order-in-Appeal No.17-24 (STA-I) dated 30.01.2017 passed by the Commissioner of GST & CE (Appeals), Chennai).

M/s. Miramed Ajuba Solutions Pvt. Ltd. **Appellant**
12-02, TIDEL Park,
4, Canal Bank road,
Chennai-600 113.

Vs.

The Commissioner of Service Tax -III **Respondent**
Newry Towers,
No. 2054-I, 2nd Avenue,
Anna Nagar, Chennai-600 040.

APPEARANCE

FOR APPELLANT : Shri M. Karthikeyan, Advocate
FOR RESPONDENT : Shri M. Ambe, DC, Authorized Representative

CORAM

Hon'ble Shri P. DINESHA, MEMBER JUDICIAL
Hon'ble Shri VASA SESHAGIRI RAO, MEMBER TECHNICAL

Date of Hearing: **21.03.2023**
Date of Pronouncement: **03.04.2023**

FINAL ORDER Nos. 40245-40252/2023

Order : Per Hon'ble Shri Vasa Seshagiri Rao

All the above eight appeals filed by M/s. Miramed Ajuba Solutions Pvt. Ltd., Chennai, involving the same issue viz., rejection of their refund claims filed under Rule 5 of Cenvat

Credit Rules, 2004, are being taken up together for disposal by this common order.

2.1 The brief facts are that the appellants herein are a wholly owned subsidiary of Ajuba Solutions Mauritius Limited, which in turn is a wholly owned subsidiary of M/s. Ajuba International ICC. The appellants are 100% Export Oriented Unit (EOU) and got registered with the Software Technology Parks of India (STPI). The appellant is engaged in the business of providing services in relation to Business Process Outsourcing, which interalia includes providing Healthcare Revenue Cycle Management and Collection Services to their only client M/s. Ajuba, USA. The appellants have obtained Service Tax registration under Business Auxiliary Services (BAS) and Business Support Services (BSS). The appellants have been utilizing various input services towards providing the above mentioned output services. In respect of the service tax paid on input services used for export of the above mentioned services, they had filed for Refund of unutilized Cenvat Credit for eight quarters spanning from July 2012 to September 2014 under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE dated 18.06.2012. The details of eight refund claims and the period involved are summarized below:-

No.	Appeal No.	Period Involved	Amount claimed (Rs.)	Refund Involved (Rs.)
1	ST/41386/2017	Jan'14 to Mar'14	61,84,262	61,75,803
2	ST/41387/2017	Oct'12 to Dec'12	63,93,720	63,93,533

3	ST/41388/2017	Jul'14 to Sep'14	61,87,085	61,87,085
4	ST/41389/2017	Jul'14 to Sep'13	71,12,869	71,12,869
5	ST/41390/2017	Jul'12 to Sep'12	51,20,074	51,20,074
6	ST/41391/2017	Jan'13 to Mar'13	68,18.388	68,18.388
7	ST/41392/2017	Oct'13 to Dec'13	66,65,490	66,65,490
8	ST/41393/2017	Apr'13 to Jun'13	58,67,903	58,67,903
	Total			5,03,41,145

There were eight Show Cause Notices issued to the appellants proposing to reject the above refund claims and after due process of law, the lower appellate authority rejected the refund claims mainly for the following reasons:-

i) The claims of the appellant are time barred as they were filed beyond the period of one year from the dates of export invoices.

ii) While filing for Refund claims, the appellants have not reversed the credit as required under Notification No. 27/2012-CE (NT) dated 18.06.2012.

iii) Apart from the time bar, certain portion of the credit has been disallowed for the reasons of non-registration of the premises, missing invoices, excess credit wrongly taken, service provider's registration number not available etc.

2.2 In the grounds of appeal, it was submitted by the appellant that the issue regarding the relevant date of filing refund claims in respect of the credit availed on input services has been finally settled by way of amendment to Notification No. 27/2012-CE (NT) dated 18.06.2012 vide Notification No.14/2016-CE (NT) dated 01.03.2016, whereby it was

clarified that the relevant date to be adopted for filing of refund claim shall be one year from "the date of realization of invoice in foreign currency".

3.1 Learned Advocate Shri M. Karthikeyan for the appellants has relied on the decision of the CESTAT's Larger Bench in the case of *CCE & GST, Bengaluru Service Tax-I Vs. M/s. Span InfoTech (I) Pvt. Ltd*. reported in 2018 (12) G.S.T.L. 200 (Tri.-LB), wherein it has been held that the relevant date of filing refund claim under Rule 5 of the Cenvat Credit Rules may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed quarterly. It was also submitted that the above ratio has been followed by the Hon'ble Chennai Bench of the Tribunal in the following cases:-

1) *Vestas Technology R & D Chennai Pvt. Ltd*.
2022 (6) TMI 615-Cestat, Chennai

2) *Sundaram Business Services Ltd.*
2019 (9) TMI 582-Cestat, Chennai

3) *GE Drilling Engineering Services of India Pvt. Ltd*.
2019 (8) TMI 1025-Cestat, Chennai

4) *Blackberry India Pvt. Ltd.*
2021 (45) GSTL 272- (Tri.-Del.)

3.2 It has been also submitted that some minor portion of Cenvat Credit was rejected on the ground that the appellant has failed to take registration of their premises. In this regard, it was informed that the appellants have registered with the service tax department from December 2008 onwards and the denial of refund claims was not on the ground that the appellant is not registered but it was only on the ground that

three invoices issued by M/s. Dimension Data did not contain their Service Tax Registration Number. Though the service tax registration number of the supplier was available, non-mentioning of such registration number has been mentioned as a ground for rejection of refund. Regarding missing supplier invoices, the appellants have furnished the same before the lower appellate authority but he failed to consider the same and have not recorded any findings. The learned Advocate submitted that the eligibility of cenvat credit cannot be examined during the processing of refund claims and this should have been ideally done by the Proper Officer under Rule 14 of CCR, 2004 read with Section 73 of the Finance Act, 1994. Learned Advocate relied on the following case laws in support of his arguments.

1) *Qualcomm India Pvt. Ltd.*
2020 (43) GSTL 402 – (Tri.-Hyd.)

2) *24/7 Customer Pvt. Ltd.*
2021 (3) TMI 414-Cestat, Bengaluru

3) *K Line Ship Management (I) Pvt. Ltd.*
2018 (12) TMI 1481-Cestat, Mumbai

4) *Convergys India Services Pvt. Ltd.*
2017 (48) STR 173 (Tri.-Chen.)

3.3 On the issue of non-reversal of cenvat credit while filing the refund claims, it is submitted that though they have not reversed the credit initially at the time of filing refund claims but reversed the credit equivalent to the refund claim amount in the ST-3 returns filed by them. He hastened to add that for rejecting refund claims, non-reversal of credit was not made

a ground in these subject SCNs, but the order of the adjudicating authority denied refund claims on that ground which is not legally sustainable.

4. Learned AR Shri M. Ambe representing the Revenue has reiterated the reasoning given in the orders of the lower adjudicating authority and First Appellate Authority.

5. Heard both sides and perused the records.

6.1 The main issue involved in these appeals is whether the refund claims filed by the appellants are time barred or not, in terms of the provisions of Section 11 B of the Central Excise Act, 1944 read with Notification No. 27/2012 –CE (NT) dated 18.06.2012. Rule 5 of CCR,2004 permits a manufacturer who exports goods or a service provider who exports services to claim refund of cenvat credit which was unutilized on account of export of goods or export of services subject to the procedure, conditions and limitations as prescribed in Notification No. 27/2012 –CE (NT) dated 18.06.2012. Among the conditions in this notification, paragraph 3 (b) stipulates that the application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant before expiry of the period specified in Section 11B of the Central Excise Act, 1944. The appellant filed eight refund claims of unutilized Cenvat Credit on export of services during the period July, 2012 to September, 2014. The original

authority rejected their refund claims on the ground that these were filed beyond the period of limitation specified in Section 11B of the CEA, 1944, considering the dates of export invoices.

6.2 On study of various decisions of the Judicial Authorities including the Co-ordinate Benches of the Tribunal, we find that Section 11B of the CEA, 1944 has been drafted to prescribe a procedure for claiming of refund of central excise duty under various circumstances within one year from the relevant date. The relevant date has been defined in the explanation to this Section for various purposes. As far as the export of services is concerned, no relevant date was prescribed in this Section because this was meant for refund of duty of excise and not for export of services. Since the Notification No. 27/2012 –CE (NT) dated 18.06.2012 required the claim to be made before the expiry of a period specified under Section 11 B and this Section does not specify what is the relevant date in case of export of services, the Tribunal has, in a series of decisions, held that relevant date in case of export of services is the date of realization of the foreign exchange. The reason for this is the export of services is not complete unless the foreign exchange is realized as per Rule 3 (2) (b) of export of services Rules, 2005. Therefore, unless the foreign exchange is realized, the export is not complete and therefore the relevant date must be the date of realization of foreign exchange.

6.3 Subsequently, Notification No. 14/2016 CE (NT) dated 01.03.2016 was issued as a modification to the original Notification No. 27/2012-CE(NT) dated 18.06.2012. The Notification reads as follows:-

14/2016-Central Excise (N.T), Dated: March 1, 2016

"Refund of Cenvat credit for export of Services under Cenvat Credit Rule 5 – Notification No. 27/2012- CE (NT) amended

In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004, the Central Board of Excise and Customs hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 27/2012 - C.E. (N.T.) dated 18th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 461(E), dated the 18th June, 2012, namely:-

In the said notification, in Paragraph 3, for clause (b), the following shall be substituted, namely:-

"(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under:

(i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);

(ii) in case of service provider, before the expiry of one year from the date of -

(a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

(b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice."

In the present case, the exports were made and refund claims filed before the issuance of the above notification. The lower adjudicating authority reckoning the date of export invoice as the relevant date, rejected these refund claims as time barred.

6.4 We find that there is no ground that Section 11 B mandates that the date of invoice must be considered as the relevant date. The residual category under Section 11 B is the date of payment of duty. In case of export of services as in

these appeals there is no payment of duty at all. As such, the Tribunal has considered as to what constitutes an export of service under the Export of Service Rules and concluded that the date of realization of foreign exchange is the relevant date. If the export is not complete, the exporter of services is not entitled to claim refund under Rule 5 of CCR, 2004. Therefore, harmoniously reading the Export of Service Rules and Section 11 B of CEA, 1944, the Tribunal has held a view that in case of export of services, the relevant date must be the date of realization of foreign exchange. For this reason only, an Amending Notification No. 14/2016-CE (NT) dated 01.03.2016 was issued to remove the lacuna in the initial Notification No.27/2012-CE (NT) dated 18.06.2012.

6.5 We find that the issue of limitation/Time bar in the impugned order stands settled in favour of the appellants in view of the Larger Bench decision in the case of *Span Infotech Pvt. Ltd.* ,- 2018 (12) G.S.T.L. 200 (Tri.-LB) wherein the Tribunal has held as follows:-

> "**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.
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> **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.)].
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> **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.
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> **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."

Further, we find that while scrutiny of the refund claims filed by the appellants, the lower adjudicating authority rejected a portion of the refund claims for the reason that they are not eligible for availment of Cenvat credit under Cenvat Credit Rules, 2004, on account of missing invoices, excess credit wrongly taken, Not being related to output service, non-mentioning of service provider's registration number on the input/input service invoices etc. Learned Advocate for the appellants has submitted that these invoices are actually available but due to omission missed out to be attached at the time of filing refund claims and they had submitted all the copies of those invoices before the lower adjudicating

authority. But the lower adjudicating authority have not taken them into consideration and proceeded to reject the refund claims. Learned Advocate has also argued that the proper way to recover ineligible credit is by resorting to Rule 14 of CCR read with Section 73 of the Finance Act and not during the time of scrutiny of refund claims. We find that in the grounds of appeal the appellants have admitted that certain excess credit was wrongly taken by them amounting to Rs.7,819/- and a few invoices involving a credit of Rs. 1,91,935/- were not submitted which were categorized as missing. The appellant is required to reverse this input tax credit as admitted by them.

7. In view of the above findings, the denial of refund claims filed is not in accordance with law and as such, the impugned order is set aside and all the eight appeals are allowed with consequential relief, as per law.

(Order pronounced in the Open Court on **03.04.2023**)

(VASA SESHAGIRI RAO)
MEMBER TECHNICAL

(**P. DINESHA)**
MEMBER JUDICIAL

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