(2024) 04 CESTAT CK 0006

Customs, Excise And Service Tax Appellate, Chennai

Case No: Excise Appeal No.40109 Of 2023

Lennox India Technology Centre Pvt. Ltd	APPELLANT
Vs	
Commissioner Of GST & Central Excise	RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Central Goods and Services Tax Act, 2017 - Section 142(3
- Central Excise Act, 1944 - Section 11B(2)

Hon'ble Judges: M. Ajit Kumar, Member (T)

Bench: Single Bench

Advocate: Hari Ganesh, M. Selvakumar

Final Decision: Allowed/Disposed Of

Judgement

M. Ajit Kumar, Member (T)

1. This appeal is filed against Order in Appeal No. 39/2022 dated 5.9.2022 passed by the Commissioner of GST and Central Excise (Appeals â€" II),

Chennai.

2. Brief facts of the case are that the appellant had filed refund claim on 18.8.2020 for the refund of countervailing duty amounting to Rs.41,60,417/-

paid by them on 14.5.2019 at the time of exit from the status of 100% EOU under the STPI Scheme. Since the credit could not be carried forward in

the returns, the same could not be transitioned to GST. They have initially filed the refund application with the State authorities as per section 142(3) of

the CGST Act, 2017 on 12.5.2020 which was rejected on 9.5.2020 stating that the State authorities do not have the jurisdiction to process such a

refund. The present refund claim was filed before the Central authorities on 18.8.2020 along with supporting documents. After due process of law, the

original authority rejected the refund claim. In appeal, Commissioner (Appeals) upheld the same. Hence the present appeal before this Tribunal.

3. Shri Hari Ganesh, learned Chartered Accountant appeared for the appellant and Shri M. Selvakumar, learned Assistant Commissioner (AR)

appeared for the Revenue.

4. I find that this is an issue where the appellant has filed a refund claim for the refund of countervailing duty (CVD) paid by them at the time of exit

from the status of 100% EOU under the STPI Scheme. Since the credit could not be carried forward in the returns, the same could not be transitioned

to GST. The original authority rejected the refund claim on the ground that the appellant should have taken the credit when existing law was in force.

He held that the CVD paid subsequent to the introduction of GST will not qualify as CENVAT and therefore no cause for refund arises. The

Commissioner (Appeals) vide the impugned order has found that the observation of the original authority was not correct. He felt that what has to be

seen is whether the CVD paid is allowable as credit prior to 30/06/2017. He concluded that obviously such a credit is allowable under Rule 3(vii) of

Cenvat Credit Rules. Having decided in favour of the appellant on the issue he however went on to state that since debonded goods were IT

infrastructure which were capital goods, the credit availed on CVD was not eligible for refund. He further stated that as per clause (c) to section

11B(2) duty of excise paid on goods used as input alone were refundable and not the CVD paid on capital goods. Hence no refund can be claimed on

CVD paid on capital goods debonded in the GST regime by application of section 11B(2) of Central Excise Act.

5. I find that the issue appealed against by the Appellant before the Commissioner (Appeals) has been answered in his (Appellants) favour. The issue

before me arising from the appeal is relating to that part of the impugned order which states that duty paid on de-bonded goods are IT infrastructure

and are capital goods, and hence the CVD paid was not eligible to be availed as credit under the CENVAT Credit Rules, 2004.

6. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties. Since the matter whether IT

infrastructure are capital goods and the CVD paid on it was eligible or not as CENVAT credit and thereby to a refund was not an issue before the

Commissioner (Appeals), he could not have opined on the same. By doing so, he has first answered the appeal in the Appellantâ€™s favour and then

gone beyond the appeal made by the appellant to deny the refund. The Honâ€™ble Apex Court in Krishna Priya Ganguly etc. Vs. University of

Lucknow & Ors. etc. [AIR 1984 SC 186]; and Om Prakash & Ors. Vs. Ram Kumar & Ors., [AIR 1991 SC 409], observed that a party cannot be

granted a relief which is not claimed. Hence the learned Commissioner (Appeals) could not have given Revenue the benefit, if any, of an issue of

which they were not aggrieved and had not filed an appeal or cross objection. This being so, I do not propose to go into the merits of the issue.

7. The impugned order is hence modified and that part of the decision on whether IT infrastructure are capital goods and the credit of CVD taken are

eligible for refund is set aside being made based on grounds outside the pleadings of the appellant. The appeal is hence allowed and is disposed of

accordingly on the above terms. The Appellant is eligible for consequential relief as per law.