
Times Content Limited Vs Commissioner of Central Excise And CGST, New Delhi

Service Tax Appeal No. 51033 of 2020

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Nov. 4, 2024

Acts Referred:

Finance Act, 2015 â€” Section 119#Central Excise Act, 1944 â€” Section 11B#Provision of Service Rules, 2012 â€” Rule 3#Service Tax Rules, 1994 â€” Rule 6A#Cenvat Credit Rules, 2004 â€” Rule 3(5C), 5, 5(1)(D)#Central Excise Rules, 2002 â€” Rule 9, 18

Hon'ble Judges: Binu Tamta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: A. K. Batra, S. K. Meena

Final Decision: Allowed

Judgement

Hemambika R. Priya, J

1. The present appeal has been filed by M/s Times Content Limited, The appellant to assail the Order-in-Appeal No. 30/ST/DLH/2020 dated

24.06.2020 wherein the Commissioner (Appeals) has upheld the order-in-original and rejected the appeal of the appellant.

2. The facts of the case are that the appellant was engaged in the business of live broadcasting of cricket matches on DTH and other digital media

exclusively in the territory of USA and Canada, for which the appellant had entered into an agreement with its foreign buyers. In order to provide the

aforesaid services, the appellant had to acquire digital media broadcasting rights for cricket matches from different cricket boards/ licensors outside

India. The appellant executed one deal in the last quarter of F.Y.2015-16, wherein this business was conducted for the entire year. As such sports

rights were for live broadcast of matches in the territories outside India i.e., for USA and Canada etc. Thus, the place of provision of service was

outside India in terms of Rule 3 of Place of Provision of Service Rules, 2012 read with Rule 6A of Service Tax Rules, 1994. Hence, the appellant is

exclusively engaged in export of services. As the appellant was exclusively engaged in export of services outside India, he filed a refund claim of

CENVAT Credit for the period in dispute i.e. April 2016 to June 2016 totalling to Rs. 3,99,12,617/- in terms of Rule 5 of Cenvat Credit Rules, 2004,

CCR, 2004 read with Notification no. 27/2012-CE (NT) dated 18.06.2012. On scrutiny of the refund claim filed by the appellant for the

abovementioned period, the Department issued a show cause notice dated 08.04.2019 as to why the claim should not be rejected. The Adjudicating

Authority vide order dated 14.11.2019, rejected the refund claim amounting to Rs. 3,85,36,320/- under Rule 5 of the Cenvat Credit Rules, 2004 read

with Notification No. 27/2012-CE (NT) dated 18.06.2012. Aggrieved by the said order, the appellant preferred an appeal before Commissioner

(Appeals) who in turn, rejected their appeal by upholding the order of the lower authority. Hence, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the issuance of an Addendum/Corrigendum to the Show Cause Notice (SCN) after a six-month

gap, and only after considering the appellant's response to the SCN, constitutes an afterthought. As such, it cannot be relied upon as a valid basis for

rejecting the refund claim. He contended that concept of Addendum/corrigendum is not statutorily provided under the law. However, references have

been made in circulars where it is clarified that the scope of Addendum/corrigendum is very limited. The Addendum/corrigendum is normally issued

by the Department when there is a change in adjudicating authority or there is some arithmetical error. The said view has been clarified by various

circulars mentioned below.

Ã¢â¬Â¢ Circular No. 1053/2/2017-Ð¸Ð¸., dated 10-3-2017

Ã¢â¬Â¢ Circular No. 994/01/2015-CX, dated 10-2-2015.

Ã¢â¬Â¢ Circular No. 922/12/2010-CX., dated 18-5-2010.

Ã¢â¬Â¢ Circular No. 865/3/2008-CX., dated 19-2-2008.

Learned Counsel contended that it is a well-established legal principle that the Show Cause Notice (SCN) cannot be retroactively enhanced or

modified after its initial issuance. Consequently, the issuance of an Addendum/Corrigendum to the SCN cannot introduce new allegations that were

not originally part of the SCN. In the present case, the Department's issuance of an Addendum/Corrigendum on October 14, 2019, six months after

the initial Show Cause Notice (SCN), and only after considering the appellant's response to the SCN, is illegal. By relying on fresh allegations not

mentioned in the original SCN, the Department's denial of the refund claim is legally flawed and constitutes a violation of established principles. The

issue is no more res-judicata.

3.1 Learned Counsel for the appellant further submitted that the formula prescribed under said rule is not applicable in the present case as the

appellant is 100% exporter and the entire turnover pertains to the export of services. The formula as prescribed under the law.

Refund amount = (Export turnover of goods+ Export turnover of services) x Net CENVAT credit_____

Total turnover

This formula is intended to restrict the refund of tax paid on input services to the extent of export services, effectively excluding the refund of tax paid

on domestic services. The learned counsel submitted that since the appellant is a 100% exporter, the application of the formula would not result in any

advantage to the Department, as the appellant was eligible to claim a full refund of the tax paid on input services. The Department's application of the

formula is erroneous and leads to illogical outcomes, including the denial of rightful refunds to the appellant in quarters where no export receipts are

collected. This interpretation not only defies the legislative intent behind the formula but also undermines the principle of refund eligibility for exporters.

The refusal to grant CENVAT credit to service exporters would frustrate the underlying objective of the government's export policies, which aims to

incentivize and support exports.

3.2 Learned Counsel also stated that even if the export turnover is calculated to be nil under Rule 5(1)(D) of the CENVAT Credit Rules, 2004, the

appellant was still entitled to a refund of Rs. 3,99,12,617/-for the subsequent quarter (July-September 2016). He submitted that this entitlement arises

from the provisions of Rule 5 of the CENVAT Credit Rules, 2004 read in conjunction with Notification No. 27/2012-CE (NT) dated June 18, 2012. He

stated that premature filing of the refund claim cannot be the sole reason for rejection by the department. As long as the claim is substantively valid

and compliant with all relevant rules and regulations, the department cannot deny it solely on the ground of early submission. He further stated that the

appellant could not file the refund in the subsequent quarter as the SCN proposing rejection of its refund claim was issued in 2019 i.e., after

introduction of GST regime and at that point of time, the appellant could not even transfer the eligible credit to the electronic credit ledger through

TRAN-1 under GST era. Thus, the refund should not be denied to the appellant.

3.3 Learned counsel submitted that in accordance with Section 119 of the Finance Act, 2015 (Chapter VI), the provisions of Chapter V of the Finance

Act, 1994, and the corresponding rules, including refund-related provisions, shall be applicable mutatis mutandis to the Swachh Bharat Cess.

Therefore, the appellant was eligible for a refund of Rs. 13,76,297/-, representing the Swachh Bharat Cess. He submitted that the letter dated

03.05.2019 agreeing to withdraw the refund claim of Swachh Bharat Cess and interest due on the refund, was submitted by the appellant on the

insistence of department. There were no negative findings or objections raised by the department regarding the appellant's refund claim, and no

intention to deny the refund was evident. In support of his submission, learned counsel for the appellant relied upon the following decisions:-

- (i) Commissioner vs. JMC Projects (India) Limited, 2015 (38) STR J430 (S.C.)
- (ii) Commissioner vs. Steel Authority of India Limited, 2008 (225) ELT A130 (S.C.)
- (iii) ESPI Industries Chemical vs. Commissioner, Hyderabad, 2000 (115) ELT 81 (Tribunal)
- (iv) Mahindra & Mahindra Limited vs. Commissioner, Mumbai, 2006 (196) ELT 62 (Tri.-Mumbai)
- (v) State Street Syntel Services Pvt. Ltd. vs. Commissioner, Mumbai, 2019 (27) GSTL 519 (Tri.-Mumbai)

4. Learned Authorized Representative for the Department while reiterating the findings of the impugned order, submitted that the Adjudicating

Authority had rejected the refund claim as its export proceeds were not received in that quarter in which the refund was claimed, for consideration in

calculating export turnover of that particular quarter. Learned AR stated that the appellant had contended that export sale proceeds in respect of

services exported during the quarter, had been received in subsequent quarters but within one year from the date of invoice i.e. within the time

allowed under the Rules. In this regard, according to Appellant, they could file claim within one year from the date of realisation, as per amended

notification. However, learned AR contended that the appellant has not explained as to why then the claim was filed in that particular quarter. The

adjudicating authority has followed the provisions laid down in terms of clause (e) of paragraph 2 of Notification No.27/2012-CE(NT) dated 18-06-

2012. As per the rules, the export turnover of service is restricted to only that value which relates to receipt of payment and appellant has not received

any advance, as reported in the impugned order. Thus, only the services for which payments were received are covered by export turnover.

4.1 Learned Authorized Representative further submitted that for arriving at the export turnover, the adjudicating authority had not considered such

invoices whose export proceeds were not realised in that particular quarter. The appellant in his appeal has contended that their entire turnover is

export turnover, and no other services is provided in domestic tariff area, hence, export turnover should be considered for invoices issued for

computing and allowing refund. The Learned Authorized Representative submitted that the appellant has misunderstood that there is no difference

between export and total turnover and whole of the input value is eligible amount for refund. Learned AR stated that even if the total turnover of the

appellant relates to export, it does not mean that there is no difference between export and total turnover, and the Appellant was required to file refund

claim under Form- A appended to the Notification No. 27/2012 CE-NT dated 18.06.2012 by calculating the Export turnover of services as determined

in accordance with clause (D) of sub-rule (1) of rule 5 of the Cenvat Credit Rules, 2004. Even if whole of the turnover of the appellant is export

turnover, it cannot substitute 'Export Turnover' with the billed amount, as the Export Turnover for a particular quarter depends upon the realisation of

export proceeds of exported services only as per Rule 5(1) (D) of Cenvat Credit Rules, 2004. In view of the above, the contention of the appellant

that since whole of their turnover is export turnover their impugned claim should be allowed is not tenable. The refund amount has been computed

correctly by the Adjudicating Authority in the impugned order-in-original.

5. We have heard Ld Counsel for the appellant and the Ld. AR for the department. Before considering the primary issue of eligibility of the appellant

for refund, we take up the preliminary submission of the learned counsel that the issue of an Addendum/Corrigendum to the Show Cause Notice

(SCN) after a six-month gap, and only after considering the appellant's response to the SCN, constitutes an afterthought. In this context, we note that

the initial notice was issued to deny the appellant's claim for refund for non-fulfilment of the conditions of the Notification. The said addendum

dated 14.10.2019 further supplements the allegations contained in the original show cause notice, stating that the formula for calculating the refund

amount was not fulfilled. We note that in the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI [1982 (010) ELT 0844 (MP)], the Madhya Pradesh

High Court at Jabalpur held that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for

quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is

deficient. Therefore, we hold that there is no legal infirmity in the issuance of addendum in this regard.

6. We now consider the core issue as to whether the appellant has fulfilled the conditions of the Notification No. 27/2012-CE (NT) dt 18.06.012 as

amended by Not. No. 14/2016-CE (NT) dated 1.03.2016 while filing the refund of accumulated Cenvat credit availed on export of services. The

provisions are reproduced hereinafter:

“Refund of CENVAT Credit

A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed

refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be

specified by the Board by notification in the Official Gazette:

Refund amount = (Export turnover of goods+ Export turnover of services) x Net CENVAT credit-----

Total turnover

Where,-

(A) “Refund amount” means the maximum refund that is admissible;

(B) “Net CENVAT credit” means total CENVAT credit availed on inputs and input services by the manufacturer or the output service

provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and

exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been

completed for which payment had been received in advance in any period prior to the relevant period" advances received for export

services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause

(D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment)

Rules, 2012, within a period of one year from such commencement.

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed

under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise

Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Explanation 1. - For the purposes of this rule,-

(1) "export service" means a service which is provided as per rule 6A of the Service Tax Rules 1994, whether the payment is received or

not;

(2) "relevant period" means the period for which the claim is filed.

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of

sub-rule (3) and (3A) of rule 6 is determined.

6.1 The Notification No: 27/2102-CE(NT) is reproduced herein after.

"Notification No. 27 /2012-CE (N.T.)

New Delhi the, 18th June, 2012

G. S. R-(E).- In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said

rules", and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No 5/2006

“Central Excise (N.T), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide

number G.S.R 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit

shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

2.0 Safeguards, conditions and limitations. - Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following

safeguards, conditions and limitations, namely:-

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

Provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and

other in respect of the export of services every quarter.

(b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year,

second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports

during the quarter as per the monthly or quarterly return filed by the claimant.

(d) the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

“ (e) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in

accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being

made or at the time of filing of the refund claim, whichever is less.

(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at

the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the

difference between the amount claimed and amount sanctioned.

3.0 Procedure for filing the refund claim. “

(a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A annexed to the notification, to

the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction, -

(i) the factory from which the final products are exported is situated.

(ii) the registered premises of the provider of service from which output services are exported is situated.

1[(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 Å¢â,~

(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.]

(c) The application for the refund should be signed by-

(i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;

(ii) any partner in case of a partnership firm;

(iii) a person authorized by the Board of Directors in case of a limited company;

(iv) in other cases, a person authorized to sign the refund application by the entity.

(d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

(e) The refund claim shall be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the

correctness of refund claimed in respect of export of services.

(f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he

has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused

before the sanction of refund claim.

(g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect

of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the

claim of exporter of goods or services in full or part as the case may be.Å¢â,~â€

6.2 In the instant case, the admitted facts are as follows:

(i) The refund claim was filed within the stipulated period of one year

(ii) There is no unjust enrichment involved

(iii) The amount of Cenvat Credit claimed as refund for the quarter is less than the closing balance of Cenvat Credit which satisfies condition 2(g).

(iv) the refund amount claimed by the appellant was debited from the Cenvat Credit balance.

The appellant submitted Form-A along with the prescribed documents and enclosures for the quarter, along with the certificate in Annexure A-1.

(v) All the conditions prescribed under Rule 6A of the Service Tax Rules is satisfied.

6.3 However, the original adjudicating authority has held that as the appellant had failed to provide supporting documents in relation to the payment

received during the relevant period, hence the refund claim was being rejected. The impugned order has also upheld these findings.

6.4 We note that the Ld Counsel has submitted before us that the formula prescribed under said rule is not applicable in the present case as the

appellant is 100% exporter and the entire turnover pertains to the export of services. He contended that the formula is intended to restrict the refund

of tax paid on input services to the extent of export services, effectively excluding the refund of tax paid on domestic services. The learned counsel

further submitted that since the appellant is a 100% exporter, and that the appellant was eligible to claim a full refund of the tax paid on input services.

The Department's application of the formula is erroneous and has led to denial of rightful refunds to the appellant in quarters where no export receipts

are collected. Ld AR has countered this submission stating that there is a difference between Total Turnover and Export Turnover. In this context, we

note that the original authority has noted that the appellant did not provide supporting documents in relation to the payment received during the relevant

period. It is also admitted that the appellant had satisfied all the other conditions of the said notification. We also note that the submissions made by the

Ld Counsel that it cannot be sole reason for rejection by the department, as long as the claim is substantively valid and compliant with all relevant rules

and regulations, the department cannot deny it solely on the ground of early submission. We agree with the submissions of the Ld Counsel. In this

context, we note that it is settled law that substantive benefit cannot be denied for procedural infractions. We note that procedure has been prescribed

to facilitate verification of substantive requirement. As long as a fundamental requirement is met, other procedural deviation can be condoned. In

Mangalore Chemicals and Fertilizers Ltd Vs. Deputy Commissioner [1991 (8) TMI 83 - SUPREME COURT OF INDIA], the Hon'ble Supreme

Court held that the procedural infraction of Notification, Circulars etc., are to be condoned, if exports have already taken place and the law is settled

now that substantive benefit cannot be denied for procedural lapse. Similarly, in the decision in the case of Agio Pharmaceuticals Limited [2013 (6)

TMI 686 - GOVERNMENT OF INDIA], the Government held that there is no dispute of duty or export of duty of goods registered in warehouse

under Rule 9 of Central Excise Rules, 2002. Goods were cleared from factory under Central Excise supervision and ARE-1 signed by both partners

endorsed by Customs and the Central Excise authorities stated that the goods exported, shipping bills and substantial conditions of Notification No.

19/2004- CE (NT), dated 06.09.2004 and Rule 18 of Central Excise Rules, 2002 were complied with. Rebate cannot be denied for minor procedural

infraction. In the instant case, it is established that broadcast services were exported. Thus, we hold that there is no reason for denying the refund on

minor procedural infractions. However as the relevant documents were not submitted before the original authority, we hold that this matter needs to

be remanded, giving an opportunity to the appellant to produce all the relevant and supporting documents before the original adjudicating authority to

satisfy the remaining condition of the notification.

6.5 As regards the refund of Swachh Bharat Cess to the appellant, we note that the issue is no more res integra in view of the decision of this

Tribunal vide Order No. A/85863/2019 dated 9.5.2019 in Appeal No. ST/88272/2018, State Street Syntel Services Pvt., Ltd. vs. Commr. of Central

GST& Central Excise, Mumbai and Order Nos. 86100-86102/2019 dated 14.6.2019 in Service Tax Appeal Nos. 88002-88003/2018 & 88012/2018,

wherein the Tribunal while discussing Section 119 of the Finance Act, 2015 and various other case laws, held that the Swachh Bharat Cess paid on

input services has to be available as Cenvat Credit and the same can be discharged by utilizing Cenvat Credit and the appellant therein are entitled for

refund of it. Consequently, we hold that the appellant cannot be denied the refund of what is allowed to them statutorily, merely on the grounds that

they have submitted a letter to the Department for not pressing the same.

7. Accordingly, we set aside the impugned order and allow the appeal by way of remand.

(Order pronounced in the open Court on 04.11.2024)