M/s. Advance Micro Fertilizers Pvt.Ltd. Vs Commissioner of Central Excise And CGST

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

Date of Decision: Jan. 10, 2025

Acts Referred: Central Goods and Service Tax Act, 2017 â€" Section 16, 39, 49(6), 54, 140, 142(3), 174(2)
Central Excise Act, 1944 â€" Section 11B, 11B(1)
Cenvat Credit Rules, 2004 â€" Rule 117

Hon'ble Judges: Binu Tamta, Member (J)

Bench: Single Bench

Advocate: Priyanka Goel, M.K. Chawda

Final Decision: Allowed

Judgement

Binu Tamta, J

1. Challenge in the present appeal is to the Order-in-Appeal No.27(RLM)CE/JPR/2023 dated 07.06.2023 affirming the rejection of the refund claim

on the ground of being time barred and unjust enrichment.

2. The appellant is engaged in the manufacture of Insecticides, Rodenticides, Fungicides, Herbicides, Anti-Sprouting products and Plant Growth

Regulators, Disinfectant. On the basis of reverse charge mechanism, they deposited the service tax amounting to Rs.2,67,659/- under the existing law

of service tax and were entitled to avail the benefit of the Cenvat credit of the said amount under the Cenvat Credit Rules, 2004. Since the Credit

Rules, 2004 were replaced by the Central Goods and Service Tax Act, 2017, the appellant could not take the Credit. The remaining balance of the

credit along with the tax paid on services received in June 2017, but accounted for in the month of July 2017, they carried forward the same through

TRANS- I Form under section 140 of the CGST Act, 2017. Scrutiny of the TRNS-I records, it was observed that the appellant had wrongly carried

forward/transitioned the Cenvat Credit amount as an Input Tax Credit on the basis of GARÃ¢â‚¬"7 challan of service tax deposited under reverse charge

after 7.07.2017 in TRANS-I.

3. Show cause notice dated 12.08.2021 was served on the appellant raising the demand of Rs.2,67,659/-. The appellant filed the refund claim of the

said amount on 23.09.2021 under Section 11B of the Central Excise Act 1944, as the said amount was available as a credit but could not be availed

due to introduction of GST regime. Both the Adjudicating Authority and the Appellate Authority rejected the refund claim on the ground of limitation

under Section 11B as the service tax was deposited on 28.08.2017, whereas the refund claim has been filed on 23.09.2021 and also that the appellant

has not submitted the documentary proof as regards unjust enrichment. Being aggrieved, the appellant has filed the present appeal before this

Tribunal.

4. Heard both the sides and perused the records of the case.

5. The submission of the learned Counsel for the appellant is that they had filed the refund claim on 23.09.2021 within a period of two months from the

date of the show cause notice dated 12.08.2021 which is the relevant date in the present case. Referring to the provisions of Section 11B, she

submitted that the relevant date for counting the period of one year is not the date of deposit of tax rather it is the date of the order-in-original on

which the show cause notice has been passed and in that view, there is no delay in filing the refund claim. The learned Counsel referred to the

decisions as follows:-

(1) Circor Flow Technologies India Pvt. Ltd. Vs. Pr. Commissioner of CGST & Central Excise, Coimbatore, 2022 (59) GSTL 63 (Tri-

Chennai)

(2) Nitin Industries Vs. Com. CGST & ST, New Delhi, 2023 (9) Centax 49 (Tri-Del.)

6. On the issue of unjust enrichment, the learned Counsel submitted that the service tax deposited under the reverse charge mechanism cannot be

passed on to anybody else, as no invoice is raised for the same, and therefore, the theory of unjust enrichment is not applicable.

7. The learned Authorised Representative reiterated the findings of the Authorities below and submitted that the cause for claiming the refund of the

said amount had risen on 28.08.2017 when the tax was deposited under RCM and the refund claim filed on 23.09.2021 was beyond the prescribed

time limit of one year, hence the same is time barred. He also submitted that the required documentary proof to satisfy that the claim is not hit by

unjust enrichment has not been submitted.

8. Admittedly, the appellant had paid the service tax voluntarily under self-assessment for the period prior to 30.06.2017, which was paid on

28.08.2017 after the introduction of the GST regime. Since the tax was paid under RCM, the appellant was entitled to avail the benefit of Credit.

Under the bonafide belief, the appellant transferred the same into the TRAN-I as balance in Cenvat account, however, the Department erroneously

denied the same and the refund claim filed has been rejected by the impugned order. In this regard, the reliance placed by the appellant on the decision

of the Tribunal in the case of Circor Flow Technologies India Pvt Ltd. (supra) observing that the provisions of Section 174(2) of the GST Act does not

affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Act and ,therefore, it is clear that the

liability, if any, under the Finance Act, 1994 to pay service tax would continue even after the introduction of GST. Conversely, the right accrued under

the said Act in the nature of credit available under CCR, 2004 also is protected. In line there with, it was held that if the assessee has to pay service

tax, even after the introduction of GST, their right to avail the credit on the same cannot be denied. Further, it was observed that Section 142(3) of

GST Act provides how to deal with claims of refund of service tax and duty/credit under the erstwhile law. It was accordingly directed, that though

credit is not available as input tax credit under GST law, the credit under the old Credit Rules is eligible to the appellant and such credit has to be

processed under Section 142(3) of GST Act, 2017 and refunded in cash to the assessee. Therefore, the appellant is eligible to the said relief and the

Department is accordingly directed to process the case of the appellant in accordance with the said decision. Similar view has been taken in the

subsequent decision in the case of M/s. Nitin Industries vs. Commissioner of CGST & ST, New Delhi (supra) that the appellant is entitled to refund in

terms of Section 142(3) read with Section 54 read with Section 49(6) of the CGST Act.

9. From the view taken by the various High Courts, it is settled that denial of credit of tax or duty paid under existing law would amount to violation of

Articles 14 and 300 A of the Constitution of India. Unutilised credit has been recognized as vested right and property in terms of Article 300 A of the

Constitution of India. In Adfert Technologies Private Limited vs. Union of India, 2020 (32) GSTL 726 (P&H), the Division Bench of the High Court

held that transitional credit being a vested right, it cannot be taken away on procedural or technical grounds. The said order has been upheld by the

Supreme Court in 2020 (34) GSTL J138 (SC). It is relevant to consider the decision of the Gujarat High Court in Siddharth Enterprises Vs. Nodal

Officer, 2019 (29) GSTL 664 (Guj.), the relevant paras are quoted below: -

Ã¢â‚¬Å“33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the

input tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is

violative of Article 14 of the Constitution.

34. Section 16 of the CGST Act allows the entitlement to take input tax credit in respect of the post-GST purchase of goods or services

within return to be filed under Section 39 for the month of September following the end of financial year to such purchase or furnishing of

the relevant annual return, whichever is earlier. Whereas, Rule 117 allows time-limit only up to 27th December, 2017 to claim transitional

credit on pre-GST purchases. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time-limit to allow the availment of

the input tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination

does not have any rationale and, therefore, it is violative of Article 14 of the Constitution.

40. The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead

to double taxation on the same subject matter and, therefore, it is arbitrary and irrational.

41. C.B.E. & C. Flyer No. 20, dated 1-1-2018 had clarified as under :

Ã¢â‚¬Å“(c) Credit on duty paid stock : A registered taxable person, other than manufacturer or service provider, may have a duty paid goods in

his stock on 1st July, 2017. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention

of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid

earlier would be admissible as credit.Ã¢â‚¬â€‹

42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a

fundamental right but it is still a constitutional right. Cenvat credit earned under the erstwhile Central Excise Law is the property of the writ

-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been

appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in

this regard.Ã¢â‚¬â€‹

10. From the impugned order, we find that the refund claim filed by the appellant has been rejected on the ground of limitation as prescribed under

Section 11B of the Excise Act, which is unsustainable in view of the discussion above. The appellant had rightly availed the Input Tax Credit in the

Tran-I Form, however, the benefit thereof was wrongly denied. The issuance of the show cause notice on 12.08.2021 led the appellant to prefer the

refund claim on 23.09.2021. The provisions of Repeal & Savings in Section 174 (2) of GST Act protected the right of credit even though the

provisions of Central Excise & Service Tax were repealed. Reference is further invited to the provisions of Section 142 (3) of the GST Act, which

reads a under:-

Ã¢â‚¬Å“Provisions of Section 142(3)-- Every claim for refund filed by any person before, on or after the appointed day, for refund of any

amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the

provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary

contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Ac, 1944.Ã¢â‚¬â€‹

The provisions of Section 11B(1) which prescribes the limitation for filing the refund claim are not covered under Section 142 (3), therefore, the

rejection of the refund claim on the ground of limitation is erroneous and is unsustainable also on the peculiar facts of the present case, where the

appellant was eligible to carry forward/transit the Canvat Credit amounting to Rs.2,67,659/- under the transitional provisions of Section 140 of CGST

Act. The action of the Department has prevented the appellant from availing the credit of duty already paid by him. This has resulted in a very harsh

situation for the appellant as it deprived them from availing the benefit of their vested rights.

11. There is no question of unjust enrichment in the present case as the amount involved is towards the credit, hence the impugned order on that

ground also deserves to be rejected. Therefore, the appeal is allowed.

[Order pronounced on 10th January, 2025]