Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10372 of 2020 - SM

(Arising out of OIA-VAD-EXCUS-002-APP-539-2019-20 dated 19/02/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

FILATEX INDIA LTD **.....Appellant**
D-2/6, Jolva Dahej Road,
Dahej Bharuch
Bharuch, Gujarat

VERSUS

Commissioner of C.E. & S.T.-VADODARA-II **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Vinay Kansara, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No.11720/2024

DATE OF HEARING: 12.04.2024
DATE OF DECISION: 07.08.2024

RAMESH NAIR

The issue involved in the present case is that whether both the authorities below are right in rejecting the refund claim of Cenvat Credit of CVD and SAD paid by the appellant in terms of Section 142(3) of CGST Act, 2017. Both the authorities have rejected refund claim on the ground that the refund is not admissible as the same is not covered by Clause (a) to (f) of subsection (2) Section 11 B of Central Excise Act, 1944 and as per Section 142 (8)(a) of CGST Act, 2017, the refund is not admissible.

2. Shri Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that the reason for rejection of the refund claim have been addressed in various judgments and it was held that even though the service tax was paid under reverse charge mechanism after 01.04.2017, but for the

period prior to 01.07.2017, the refund of such duty paid being a Cenvat credit is admissible.

2.1 He further submits that the Lower Authorities have rejected the claim also on the ground that as per Section 142 (8)(a) of CGST Act, 2017 there is bar for refund of input tax credit. He submits that the present case is related to Cenvat credit of Service Tax paid under existing law and not in respect of input tax service credit under CGST Act, 2017. Section 142 (8)(a) deals with input tax credit which is not the subject matter of this case. Therefore, the rejection of refund is absolutely on the illegal footing. He placed reliance on the following judgments:-

- ITCO Industries Ltd. Vs. Commissioner of GST & Central Excise, Salem- 2023 (70) GSTL 76 (Tri.-Chennai) / (2023) 2 Centax 18 (Tri.-Mad)
- Flexi Caps and Polymers Pvt. Ltd. Vs. Commr. of CGST & C.Ex., Indore- 2022 (58) GSTL 545 (Tri.-Del.)
- Terex India Pvt ltd Vs. Commissioner of GST & C.E., Salem- 2022 (63) GSTL 238 (Tri.-Chennai)
- Indo Tooling Pvt. Ltd vs. Commissioner of CGST, C. Ex., Indore- 2022 (61) GSTL 595 (Tri.- Del.)
- Circor flow Technologies India Pvt Ltd Vs. Pr. Commissioner of GST & C. Ex. Coimbatore- 2022 (59) GSTL 63 (Tri.- Chennai)

2.2 Both the lower authorities have also contended that since CVD and SAD are not covered under the clauses (a) to (f) of Section 11 B (2) of Central Excise Act, 1944, the appellant’s claim is not valid. In this regard he submits that Section 142 (3) clearly provides for cash refund of Cenvat credit, therefore, the interpretation of the lower authorities with regard to Section 11 B (2) clause (a) to (f) is incorrect.

3. Shri Prashant Tripathi, Learned Superintendent (AR), appearing on behalf of the appellant Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the lower authorities have rejected the claim on the ground that the refund of Cenvat is not appearing under Clause (a) to (f) of Section 11 B (2). In this regard, I am of the view that since, the refund was otherwise not admissible in cash in respect of Cenvat credit but by virtue of Section 142 (3), the assessee is eligible for refund. Therefore, Clause (a) to (f) are not relevant for the purpose of refund of Cenvat credit in terms of Section 142 (3). Accordingly, on this ground the refund was wrongly rejected.

4.1 As regard the contention of the Lower Authorities that refund is barred due to Section 142(8)(a) of CGST Act, 2017, the same is reproduced below:-

> ***"(8) (a)*** *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;"*

From the reading of the above Rule, it is clear that it provides that any amount of tax which was recoverable under the existing law before 01.07.2017 and the same is recovered, the amount recovered shall not be admissible as input tax credit under this Act. There is no ambiguity in the provision that any amount of tax paid under the existing law as was done in the present case no input tax credit is admissible. Here we are dealing with the Cenvat credit and not with the input tax credit. Both the lower

authorities have gravely erred in interpreting the input tax credit as if the same is Cenvat credit. Therefore, the finding of both the lower authorities dealing with the Section 142(8)(a) of the CGST Act, 2017, for rejecting the present refund claim is absurd and absolutely illegal. Therefore, on this ground also refund could not have been rejected.

4.2 As regard the contention of the lower authorities that since the amount of service tax was paid on pursuance by the audit party, the refund is inadmissible. In this regard, I find that neither any show cause notice for recovery of the service tax invoking any extended period was issued nor adjudication of such proceeding was done. Therefore, in not paying the service tax, no mala fide intention or suppression of fact is involved. Therefore, merely because the appellant have paid the service tax on pursuance by the audit will not be a reason for denying the refund under Section 142. The judgments cited by the appellant directly support their case. However, except the grounds for rejection no other issues have been dealt by the sanctioning authority such as admissibility of the input service for Cenvat credit, unjust enrichment and relevant documents verification. Accordingly, the matter deserves to be remanded to the adjudicating authority only for the limited purpose, as discussed above.

5. The impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority in the above terms.

(Pronounced in the open court on 07.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha