CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40010 of 2020

with

Service Tax Miscellaneous Application (CT) No. 40351 of 2023

(Arising out of Order-in-Appeal No. 270/2019 (CTA-II) dated 21.09.2019 passed by Commissioner of Central Excise (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Bosch Automotive Electronics India Private Limited ...Appellant
(Formerly known as 'Bosch Electrical Drive India Private Limited)
Plot A-20/2, SIPCOT Industrial Growth Centre,
Oragadam, Sriperumbudur Taluk.
Kanchipuram – 602 105.

Versus

Commissioner of GST and Central Excise ...Respondent
Chennai Outer Commissionerate,
Newry Towers, 3rd Floor, Plot No. 2054,
I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. Raghavan Ramabadran, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41289 / 2024

DATE OF HEARING : 01.10.2024
DATE OF DECISION: 16.10.2024

Order :-

M/s. Bosch Electrical Drive India Private Ltd. (the appellant herein) has filed a miscellaneous application for change of cause title to be as 'M/s. Bosch Automotive Electronics India Private Limited' which is

allowed. The Appellant pursuant to an audit conducted by the Department in November 2017, paid Service Tax along with applicable interest of Rs. 39,18,672/- on 08.12.2017, under Reverse Charge Mechanism (RCM) on the import of services like Royalty, Technical/Professional fees for the period from April 2015 to June 2017. The Appellants claim for input service credit was objected by the Department as the CGST Act, 2017 came into effect from 01.07.2017. As the CENVAT credit was denied, the Appellant, subsequently have filed a refund claim under Section 142(3) of CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944 on 19.01.2018, claiming that the amount of service tax so paid after introduction of the GST laws was eligible as CENVAT credit under the Credit Rules. But the Department issued a Show Cause Notice dated 31.07.2018 seeking to reject the refund claim as there was no enabling provisions under CGST Act, 2017 to process the claims. The Appellant contended that they were eligible for refund in cash in terms of Section 142(3) of the CGST Act, 2017 which was rejected by the Department by Order-in-Original dated 24.04.2019 on the ground that the CENVAT rules ceased to be in force and their claim cannot be considered under CGST Act, 2017 in as much as the Service Tax was paid on 08.12.2017 after the CGST Act came into force. Further, it was held that any amount recoverable under the pre-existing law was liable to be recovered as an arrear of revenue and the amount so recovered was not eligible for any input tax credit in terms of Section 142(7)(a) of the CGST Act,2017. Aggrieved, the Appellant filed an appeal before the Commissioner (Appeals) who *vide* order dated 21.09.2019 dismissed the Appeal citing the provisions of Section 142(8) of CGST Act, 2017 as per which, any amount payable prior to 01.07.2017 was recoverable only as arrears of tax which was not eligible for Input Tax Credit under the provisions of CGST.

Therefore, being aggrieved, the Appellant had preferred the present appeal before this forum.

2. As there were conflicting judgements regarding the jurisdiction of the Tribunal to hear appeals pertaining to refund claims under CGST Act, 2017, the matter was referred to the larger bench for issue of appropriate clarification and *vide* Interim Order No. 40021/2023 dated 21.12.2023 the Larger bench of CESTAT decided that any appeal in the subject matter of dispute under Section 142(3) of CGST Act, 2017 would lie before the Tribunal and accordingly this appeal is being taken up for disposal. The relevant portion of the order of the Larger Bench is reproduced for ready reference: -

> *"8. The Deputy Commissioner, by order dated 24.04.2019, rejected the refund claim filed by the appellant for the reason that after the implementation of CGST Act on 01.07.2017, the CENVAT Rules ceased to be in force and the claim under section 142(3) of CGST Act cannot be considered to be under the 'existing law' as the service tax was not paid in time but on 08.12.2017 after the CGST Act had come into force.*
>
> *…*
>
> *…*
>
> *…*
>
> *16. In the present case, the appellant had deposited the short payment of service tax under the reverse charge mechanism in respect of import of service on 08.12.2017, after the time period prescribed for filing the last ST-3 Return had expired. This amount was, therefore, not reflected in the ST-3 Return. The CGST Act came into force w.e.f. 01.07.2017. The appellant, therefore, could not claim the transition of the input credit under section 140 of the CGST Act. The appellant could not also avail CENVAT credit under the CENVAT Rules as they were no longer in force after the introduction of the CGST Act.*
>
> *17. It is for this reason that the appellant filed an application under section 142(3) of the CGST Act claiming refund of the amount of CENVAT credit paid by the appellant. This claim of the appellant was rejected by the Deputy Commissioner by the order dated 24.04.2019 and the appeal filed by the appellant before the Commissioner (Appeals) was also rejected by the order dated 21.09.2019.*
>
> *…*

> …
>
> …
>
> *49. In the present case, the service tax was paid under the provisions of Chapter V of the Finance Act and refund was claimed under sub-section (3) of section 142 of the CGST Act, under which the claim was required to be disposed of in accordance with the provisions of the existing law.* ***Therefore, even if the service tax had been deposited by the appellant after 01.01.2017, nonetheless the refund of any amount of the CENVAT credit could be claimed only under sub-section (3) of section 142 of the CGST Act and against this order an appeal will lie to the Tribunal."***

3. The Ld. Counsel Shri Raghavan Ramabadran have reiterated the grounds of appeal and then advanced the following submissions which have been summarised as given below: -

i. It was averred that the impugned order was clearly beyond the scope of the SCN as the SCN sought to reject the refund claim in terms of Section 142(3) of the CGST Act, 2017 while the impugned order dated 21.09.2019 relied on Section 142(8).
ii. It was submitted that Section 142(8) of the CGST Act, 2017 was not applicable since the denial under Second proviso on claiming input credit is under CGST and not under CENVAT Credit Rules, 2004.
iii. It was pointed out that the Appellant was made a victim owing to a change in law, as refund claim related to the Service Tax under RCM which was available as CENVAT credit, if not under the CGST Act. In this regard it was submitted that the assessee was neither allowed to claim input credit nor claim refund.
iv. It was pointed out that there is no bar in the existing law to grant refund of Service Tax paid under RCM and the Appellant was entitled to claim refund in cash more so when they have moved out of CENVAT scheme.

v. The Appellant placed reliance on the following case laws in support of their contentions: -

(a) Fine Automotive and Industrial Radiators Pvt. Ltd. Vs. Commissioner [2019 (11) TMI1408-CESTAT, Chennai]
(b) Assistant Commissioner (Review), CGST & Central Excise vs. M/s. Shakti pumps (I) Ltd. [2024 (7) TMI 541 - CESTAT New Delhi]
(c) M/s. Krah Woory Indian Pvt Ltd vs. Commissioner of GST & Central Excise, Chennai [2024 (2) TMI 368- CESTAT Chennai]
(d) Lennox India Technology Centre Pvt. Ltd vs Commissioner of GST & Central Excise [2024 (4) TMI 109 - CESTAT Chennai]
(e) Granules India Limited vs. CCE Hyderabad [2024 (2) TMI 1375 - CESTAT Hyderabad]
(f) Kobe Suspension Co Pvt Ltd vs. Commissioner of Central Excise, Goods & Service Tax, Faridabad [2024 (6) TMI 180 - CESTAT Chandigarh]
(g) Combitic Global Caplet Private Limited vs. Union of India [(2024) 20 Centax 144 (Bom.)]
(h) Lav Kush Textiles v. CCE, Jaipur-II [2017 (353) E.L.T. 417 (Raj.)]
(i) Nilkamal Limited v. The Commissioner [2021-VIL-273- CESTAT-CHE-ST]
(j)

Sl.	Citation	Ratio and relevant para
a.	*Union of India vs. Slovak India Trading Co. Pvt. Ltd. [2008 (10) STR 101 (Kar.)]*	*Assessee entitled to a refund while coming out of modvat scheme* – Paragraph 5.
b.	*Union of India vs. Slovak India Trading Co. Pvt. Ltd. [2008 (223) E.L.T. A170 (S.C.)]*	*Decision of the Hon'ble High Court maintained in the Hon'ble Supreme Court.*
c.	*DCM Fabrics vs. CCE, Jaipur [2009 (239) E.L.T. 139 (Tri. - Del.)]*	*Cash refund is admissible when an assessee moves out of a particular tax regime*

(k) Global Analytics India Private Limited vs. Commr. Of GST and Central Excise [2020 (35) G.S.T.L. 297 (Tri. - Chennai)].
(l) MRF Ltd vs. Collector of C. Ex. 1990 (50) E.L.T. 482 (Tribunal)
(m) CGST & C. Excise, Ujjain Vs. M/s Shakti Pumps (i) Ltd. – Final Order No. 56004/2024 dated 08.07.24 in Excise Appeal No. 51131/2020 -CESTAT, New Delhi.

4. The Ld. Authorised Representative for the Department, Smt. O.M. Reena, supported the findings in the impugned order and reiterated that the Appellant is not eligible for any CENVAT credit in terms of Section 142(7)(a) / 142(8) of CGST Act, 2017 as the tax was paid only as an arrear of revenue and therefore was not entitled to refund in cash. The Ld. AR has

argued that the appeal was devoid of merits and prayed for dismissal of the appeal filed by the appellant.

5. Heard both sides and carefully considered all the submissions made and as evident from the records in this appeal.

6. The main issue that is required to be determined is whether the Appellant is eligible for refund of CENVAT credit in terms of Sec. 142(3) of CGST Act, 2017 which could not be claimed under the erstwhile laws due to implementation of GST laws with effect from 01.07.2017?

7. It is important to refer to the following provisions of CGST Act, 2017: -

i. 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 Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

ii. Section 142(7)

"(a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the

existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him 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 Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act."

iii. Section 142(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;

(b) 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 refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act."

8. It is not in dispute that an audit was conducted of the accounts of the Appellant during November 2017 for the period from April 2015 to June 2017 and the appellants have been called upon to pay short paid Service Tax and applicable interest which was duly paid by the Appellant on 08.12.2017. The Appellant has claimed eligibility to avail CENVAT Credit of this service tax paid in terms of the provisions of CCR, 2004. However, the Appellant was dis-allowed from taking CENVAT credit of the service tax so paid, since the Central Goods and Service Tax Act, 2017 ('CGST Act') had come into effect from 01.07.2017, in place of the erstwhile regime. The Appellant was also disabled from seeking transition of the CENVAT credit of the service tax so paid, since Section 140 (1) of the CGST Act permitted

transition of credit which was available in the last returns filed under the erstwhile regime. Consequently, left with no other alternative, the Appellant sought cash refund *vide* letter dated 19.01.2018 in terms of Section 142(3) of the CGST Act on the ground that the amount of service tax so paid after introduction of the GST regime was eligible as CENVAT credit under the Credit Rules, 2004. The impugned order rejected the refund claim citing that the amount of service tax payable was only an arrear of revenue which does not qualify for availing CENVAT credit in terms of Section 142(7)/142(8) of CGST Act, 2017.

9. The Ld. Counsel has submitted that the issue is no more *res integra* and is settled in favour of the Assessee by the decisions of the Tribunal. Relying on the following decisions, the Ld. Advocate has submitted that the issue of claiming refund under Section 142(3) of CGST Act, 2017 of CENVAT credit which could not be claimed under erstwhile laws due to implementation of GST Acts is settled in favour of the Assessee which I find is squarely applicable to the facts of this appeal too.

10.1 In Assistant Commissioner (Review), *CGST & Central Excise Vs. M/s. Shakti pumps (I) Ltd. [2024 (7) TMI 541 - CESTAT New Delhi]* it was held as follows: -

> *"66. The inevitable conclusion, therefore, that follows from the aforesaid discussion is that Shakti Pumps is entitled to cash refund of CENVAT credit on the amount of CVD and SAD paid even after 01.07.2017. The Commissioner (Appeals), therefore, committed no illegality in granting this relief to Shakti Pumps."*

Further, a similar issue was analysed and decided in favour of the Assessee in *M/s. Krah Woory Indian Pvt Ltd vs. Commissioner of GST & Central Excise, Chennai [2024 (2) TMI 368-CESTAT] Chennai* and in *Lennox India Technology Centre Pvt. Ltd. vs. Commissioner of GST & Central Excise [2024 (4) TMI 109 - CESTAT Chennai].*

10.2 In *Fine Automotive and Industrial Radiators Pvt Ltd vs Commissioner [2019 (11) TMI 1408- CESTAT Chennai]* it was held as follows: -

> *"5. The Ld. Commissioner (Appeals) in the impugned order has observed, while recording the facts not in dispute, that the appellant had received certain input services during the period from April 2017 to June 2017; since the CENVAT Credit pertaining to the services had not been reflected as balance transitional credit in their statutory returns, they were not able to transfer the credit amount in their TRAN-1 into G.S.T. regime. Ld. Commissioner (Appeals) also observes that sample copies of the invoices furnished before him were dated either 30.06.2017 or prior to that date, by which the Ld. Commissioner (Appeals) assumes that those invoices had already been issued by the service providers to the appellant. This conclusion appears to be jumping the gun with no documentary evidence on record and nothing on this being alleged to this effect in the Show Cause Notice. This reason, therefore, cannot be sustained.*
>
> *6. There is also no dispute that the appellant is not found to be ineligible for its refund otherwise; nor are its refund claims found to be wrong. The Revenue has also not suspected the bona fides of the appellant as regards the receipt of service or remitting of Service Tax under reverse charge mechanism. It is the introduction of the C.G.S.T. Act that prompted the appellant to claim the refund because they were unable to carry it forward, which fact also satisfies the requirements of the second proviso to Section 142 (3) of the C.G.S.T. Act, 2017.*
>
> *7. In the light of the above discussions, I am of the view that the appellant is entitled to the refund, which is also in line with the decision of the Hon'ble High Court of Judicature at Madras in the case of M/s. 3E Infotech Vs. Customs, Excise & Service Tax Appellate Tribunal, Chennai & anor. reported in 2018 (18) G.S.T.L. 410 (Mad.).*
>
> *8. Accordingly, the appeal is allowed with consequential benefits, if any, as per law"*

10.3 In *Indo Tooling Pvt. Ltd. Vs. COMMISSIONER, CGST & C. EX., Indore [2022 (61) G.S.T.L. 595 (Tri. - Del.)]* it was held as follows: -

> *"8. Having considered the rival contentions, I find that payment of service tax including the cess relating to the period prior to 30-6-2017, paid in the year 2018 during the GST regime, amounts to payment in accordance with law as the same has been paid on the insistence by the Department-audit objection. I further find that the demand pursuant to audit is also bad as the appellant was entitled to Cenvat credit being a manufacturer of dutiable items, and as such the situation is revenue neutral. Further, the appellant under the erstwhile Cenvat Credit Rules was entitled to Cenvat credit of the said amount. Further, in view of the provisions of Section 142(3) of CGST Act, provides that 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 Act, 1944 (unjust enrichment). Further, Section 142(8)(a) provides that 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 the CGST Act and the amount so recovered shall not be admissible as input tax credit under this Act. Further, sub-section (5) of Section 142 of the CGST Act provides that every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided 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 under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 (unjust enrichment).*
>
> *9. Thus, from a conjoint reading of sub-sections (3), (5) and (8)(a) of the CGST Act, it is evident that an assessee is entitled to claim refund of service tax under RCM paid after the appointed day under the existing law and such claim has to be disposed of according to the provisions of the existing law. As the appellant was entitled to Cenvat credit of the said amount of Rs. 9,85,827/-, which is now no longer available due to GST regime, they are entitled to refund of the said amount."*

10.4 In Appeal No. ST/40095/2021-SM pertaining to *Terex India Pvt. Ltd. Vs. Commissioner of GST & C.E., SALEM in [2022 (63) GSTL 238(Tri.-Chennai)]*, this Tribunal on a similar issue has held that: -

"6.2 *The refund claim has been rejected resorting to Section 142(8)(a) of GST Act, 2017. The provision has already been noticed in earlier paragraphs. The department is of the view that the payment made by the appellant is consequent to an assessment/adjudication proceeding and therefore, when recovered as an arrears of tax, the appellant is not admissible for the input tax credit under the GST Act, 2017. On bare perusal of Section 142(8), it can be seen that this sub-section (8) provides for recovery of arrears of tax after the implementation of GST Act, 2017. It deals with the provisions for assessment/adjudication proceedings that are carried out under the erstwhile law after introduction of GST. The section states that in such proceedings for recovery of arrears, the assessee will not be getting the benefit of any input credit for adjustment under GST Act, 2017. In the present case, there is no credit that requires to be adjusted to the GST Act, 2017. The entire tax paid is claimed as credit under the existing law. The sub-section states that input tax credit will not be available under GST Act. It does not say that credit is not eligible under existing law (erstwhile law). This means in consequent to recovery of arrears in assessment/adjudication proceedings no input credit can be availed under GST Act, 2017. To be more clear, if there are any arrears to be recovered under the existing law, the same can be recovered by invoking the transitional provisions of the GST Act, however, input tax credit will not be admissible under the GST Act. The ingredients of Section 142(8)(a) is as under :-*

(a) Amount of tax is recoverable consequent to an assessment or adjudication proceedings;

(b) Such amount has not been recovered under the existing law; (erstwhile law)

(c) Such amount can be recovered as an arrear of tax under CGST Act, 2017;

(d) On the amount so recovered, input tax credit will not be admissible under the CGST Act, 2017.

6.3 *Further, as rightly argued by the Learned Counsel for the appellants, the above provision deals with recovery of arrears under the erstwhile law after implementation of CGST Act, 2017. In the present case, there is no assessment/adjudication tax as contemplated under the provisions of the erstwhile law. The appellant has paid the tax when pointed out by the Audit Officers. Such payment does not fall under recovery of arrears of tax by an assessment or adjudication proceedings. The sub-section (8) to Section 142 only means that after assessment or adjudication proceedings if an assessee pays the tax so determined, he cannot claim the benefit of availment of credit under the CGST Act, 2017.*

6.4 Section 142(3) is the transitional provision for claim of refund after the introduction of GST Act, 2017. It says that refund claims of any amount paid under the erstwhile law have to be disposed according to the provisions of the erstwhile law and the amount has to be paid in cash. The appellants have paid the tax under the erstwhile law. In the present case, the claim is only for refund and not proceedings for assessment or adjudication. In such a scenario, only sub-section (3) of Section 142 will be attracted. Rejection of the refund claim by referring to sub-section (8) of Section 142 of CGST Act, 2017 is misplaced. For these reasons, rejection of refund is unjustified*."***

10.5 I find that many other case laws cited by the Appellants also supports the case of the Appellant.

11. Further the Order-in-Original dated 24.04.2019 had invoked Section 142(7) of the CGST Act, however the Impugned order has attempted to reject refund by invoking provisions of Section 142(8) of the CGST Act. A standalone perusal of the Impugned Order reveals that there is no ground whatsoever raised under the existing law, under which the refund has been denied. Invocation of Section 142(8) in the present case, for the purpose of denying refund is not warranted as none of the circumstances under Section 142(8) are attracted in the instant case. Section 142(8) invocation is warranted in a situation where amounts become recoverable from an assessee in pursuance of an assessment or adjudication proceedings initiated before, on or after the appointed date. The payment of service tax in the instant case is not pursuant to the circumstances set out in Section 142(8) but merely pursuant to audit undertaken of the accounts / records of the appellant.

12. After appreciating the facts and evidences on record and by following the judicial precedents discussed above, rejection of the refund claim cannot be justified. In view of the above findings, the impugned order dated 21.09.2019 is set aside and the appeal is hereby allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 16.10.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK