CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.51616 of 2022-SM

(Arising out of Order-in-Appeal No.47/2021-22 dated 31.03.2022 passed by the Commissioner (Appeals-II), Central Tax/Goods & Service Tax, Delhi]

M/s.Nitin Industries (Trade Name) **Appellant**
Krishan Kant Gupta (Legal Name/ Proprietor),
Z-57, Okhla Industrial Area, Phase-II,
Delhi-110 020.

VERSUS

Commissioner of Goods & Service Tax **Respondent**
Delhi South Commissionerate,
2nd & 3rd Floor, EIL Annexe Building,
Bhikaji Cama Place,
New Delhi-110 066.

APPEARANCE:

Shri N.K. Sharma, Advocate for the appellant
Shri Divey Sethi, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51105/2022

DATE OF HEARING:14.11.2022
DATE OF DECISION :24.11.2022

ANIL CHOUDHARY:

The issue in this appeal is whether the refund claim of the appellant, of the amount of cenvat credit balance as on 30.06.2017, has been rightly rejected by the Court below. The appellant was a manufacturer of Sheet Metal Components (Drum) and was registered with the Central Excise Department. The appellant was availing facility of cenvat credit of central excise duty on inputs and service tax on input services. As the appellant was mostly clearing their goods for export under bond **(Form ARE-3),** cenvat credit was accumulated. Such input credit had been declared in the Return(s) filed before the Department, which is not disputed. As on 30.06.2017, the appellant had cenvat credit balance of Rs.30,48,272/-

(including cess). The appellant migrated to GST Regime and also filed Form TRAN-I for transfer of the balance of credit. Such transfer was allowed. The production in the factory of the appellant was lying closed since financial year 2014-2015. The appellant decided not to re-start the production due to his advance age, presently aged about 75 years. Accordingly, the appellant debited the said amount of cenvat credit of Rs.30,70,472/- (in DRC-03) in electronic ledger and applied for refund on 18.03.2020/20.03.2020 under Rule 5 of CCR read with Notification No.27/2012. Pursuant to filing of refund claim deficiency-cum-show cause notice was issued. Refund claims under Rule 5 of the CCR, 2004 filed as follows :-

Sr. No.	Date of filing of refund claim	Financial Year	Refund amount claimed.
1.	18.03.2020	2005-2006	Rs. 7,29,030/-
2	18.03.2020	2006-2007	Rs. 10,03,406.43
3	18.03.2020	2008-2009	Rs. 9,90,920.80
4.	18.03.2020	2009-2010	Rs. 3,24,915.24
	Total		Rs. 30,48,272.47

2. Vide common order-in-original dated 14.07.2020, all the refund claims were rejected, *inter alia,* on the ground that in terms of Rule 5 read with Notification 27/2012 read with Section 11 B of the Central Excise Act, as made applicable in Service Tax matters vide Section 83 of the Finance Act,1944. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to uphold the rejection of the refund claim observing that, the refund in question was not allowable as per proviso to sub-Section 142(3) of CGST Act, as the credit was transferred to GST regime. Further, observed that the appellant have failed to file refund claim under Notification No.27/2012 within a period of one year and as such, the refund is barred by limitation read with Section 11B of the Central Excise Act. It was also observed that there is nothing on record to discern

the goods were cleared for export and further, the appellant failed to produce the documents like export documents, letter of undertaking, proof of receipt of goods by the client/SEZ, with the refund claims. It was further held that the appellant have not cleared bar of unjust enrichment for grant of refund. It was further observed that as per proviso to Section 142(3) of CGST Act, no refund can be allowed of any amount of credit, where the balance of the said amount as on the appointed day has been carried forward under the CGST Act. Being aggrieved, the appellant is before this Tribunal.

3. Ld. Counsel for the appellant, *inter alia,* urges that admittedly, the appellant had closing balance of Rs.30,48,272/- as on 30.06.2017, which was carried forward by filing Form Tran-I. Further, admittedly, this amount had been accumulated as the appellant had supplied major part of their finished goods to eligible SEZ/EOU units, against proper CT-3 forms. Admittedly, the appellant never commenced production during the GST Regime. Due to advance age of the proprietor, he decided not to continue or restart the business and accordingly, debited the said amount in the electronic ledger and filed refund claim. Debit of such amount claimed as refund in the electronic ledger is not disputed. It is further urged that it has been held by the Hon'ble Karnataka High Court in the case of **Slovak India Trading Company Pvt. Ltd. - 2006 (201) 559 (Kar.)** that an assessee is entitled to refund on closure of the factory and provisions of Rule 5 of CCR are not applicable for rejection of the refund claim. The said ruling of the Karnataka High Court was upheld by the Apex Court in the case of Revenue's appeal, which was dismissed, reported at 2008 (223) ELT A-170 (SC). Ld. Counsel also relies on the ruling of this Tribunal in the case of **M/s.Nichiplast India Pvt. Ltd reported at 2021 –TIOL-437-CESTAT-**

Delhi, wherein Coordinate Bench (presided by me), where the assessee had closed its business /manufacturing activities and also surrendered its registration certificate on 28.06.2017 and had claimed refund of the cenvat credit lying in balance, this Tribunal allowed the refund following the ruling of the Karnataka High Court in the case of **Slovak India Trading Co. (supra).**

4. Ld. Counsel further urges that even under the GST Regime under Section 54 of CGST Act, the assessee is entitled to refund of the accumulated credit read with Section 49(6)of the CGST Act. The appellant has admittedly debited the said amount of refund claim in the Electronic Credit Register (DRC-03). Thus, the appellant is entitled to refund in terms of Section 54 read with Section 49 read with Section 142(3) of CGST Act.

5. Ld. Authorised Representative relies on the impugned order. He further urges that refund has been rightly rejected as under Transitory Provisions Section 142(3) of CGST Act, refund is not available of the amount of credit, which has been transited to GST Regime under the provisions of the erstwhile Central Excise Act. He further states that the appellant is also required to discharge onus of unjust enrichment.

6. Having considered the rival contentions, I find that admittedly, Save and Except taking forward of the credit balance as on 30.06.2017, the appellant have not commenced production or manufacturing activities nor cleared any taxable goods on or after 1.7.2017. Further, debit by the appellant in the electronic ledger (DRC-3) amounts to reversal of credit transferred to GST regime. Further, I find that the appellant is entitled to refund under the provisions of Section 142(3) of CGST Act, which provides that assessee can file refund claim on or after the appointed day, for refund of any amount of credit of duty, etc. paid under the existing law (Central

Excise/Service Tax), subject to clearing the bar of unjust enrichment. Further, the bar of limitation has been waived under Section 142 (3). I further find that in the facts of the present case, 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. Further, I find that in the facts of the present case as the credit has been accumulated due to clearance of excisable goods, during the Excise Law Regime for export, the bar of unjust enrichment is not attracted. Accordingly, I allow this appeal and set aside the impugned order. The Adjudicating Authority is directed to grant the refund within a period of 60 days from the date of receipt of copy of this order along with interest as per Rules.

[Order pronounced on 24.11.2022]

(Anil Choudhary)
Member (Judicial)

Ckp.