IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22224, 22227, 22229,
22236, 22237 & 22240 of 2019
and
W.M.P.Nos.21508, 21510, 21515, 21517,
21519 & 21523 of 2019

W.P.No.22224 of 2019

M/s.Gil Shared Services Private Ltd.
Represented by its Authorized Signatory
DGM Finance Block B & Block C,
Ground Floor, No.184-187
Temple Steps
Little Mount
Saidapet, Chennai - 600 015. .. Petitioner in all W.Ps

Vs.

Assistant Commissioner of GST & Central Excise
Guindy Division
Chennai South Commissionerate
E.V.R.Perriyar Building, 3rd Floor
690 Anna Salai, Nandanam,
Chennai - 600 035. .. Respondent in all W.Ps

Prayer in W.P.No.22224 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No.66 dated 30.10.2018 bearing reference No.C.No.V/18/456/2018-Tech (RF) passed by the respondent to make the payment of Refund of Rs.155,314 and Rs.3,63,244/- (Rs.3,63,244/- sanctioned vide Order in Original 20/2013 (R) dated 02.05.2013, not yet received by the Petitioner) totalling to Rs.5,18,558/- for the period October 2010 to December 2010 along with interest under Section 11BB of Central Excise Act to the petitioner.

Prayer in W.P.No.22227 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No.67 dated 30.10.2018 bearing reference No.C.No V/18/456/2018 Tech (RF) passed by the Respondent rejecting the refund of Rs 1,47,892/- and Rs 6,44,728/- (Rs.6,44,728 sanctioned vide Order in Original 255/2012 (R) dated 31.12.2012 not yet received by the Petitioner) totalling to Rs 7,92,620/- for the period January 2011 to March 2011 along with Interest under Section 11BB of Central Excise Act to the Petitioner along with Interest Under Section 11BB of Central Excise Act to the Petitioner.

Prayer in W.P.No.22229 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No.68/2018 dated 30.10.2018 bearing reference No.C.No.V/18/456/2018 Tech (RF) passed by the Respondent rejecting the refund of Rs.95,826/- and Rs 6,56,917/- (Rs.6,56,917 sanctioned vide Order in Original 21/2013 dated 02.05.2013 not yet received by the petitioner) totalling to Rs.7,52,743/- for the period April 2011 to June 2011 along with Interest under Section 11BB of Central Excise Act to the Petitioner.

Prayer in W.P.No.22236 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No.69/2018 bearing reference No. C.No.V/18/456/2018-Tech-RF dated 30.10.2018 passed by the Respondent rejecting the refund of Rs.1,76,079/- and quash the same and direct the Respondent to make the payment of Refund of Rs.1,76,079/- and Rs.6,66,045/- (Rs.6,66,045 sanctioned vide Order in Original 76/2013 (R) dated 04.07.2013 not yet received by the Petitioner) totalling to Rs.8,42,124/- for the period July 2011 to September 2011 along with Interest under Section 11BB of Central Excise Act to the Petitioner.

Prayer in W.P.No.22237 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No 70/2018 dated 30.10.2018 bearing reference No. C.No.V/18/456/2018 Tech (RF) passed by the Respondent rejecting the refund of Rs.76,091/- and quash the same and direct the Respondent to make the payment of Refund of Rs.76,091/- and Rs.5,61,515/- (Rs.5,61,515 sanctioned vide Order in Original 29/2014 (R) dated 04.02.2014 not yet received by the petitioner) totaling to Rs.6,37,606/- for the period Octomber 2011 to December 2011 along with Interest under Section 11BB of Central Excise Act to the Petitioner

Prayer in W.P.No.22240 of 2019: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, call for the records of the respondent herein in, culminating in the impugned Order No.71/2018 dated 30.10.2018 bearing reference No.C.No.V/18/456/2018 Tech (RF) passed by the Respondent rejecting the refund of Rs.53,971 and quash the same and direct the Respondent to make the payment of Refund of Rs.53,971 and Rs.9,14,088 (Rs.9,14,088 sanctioned vide Order in Original 40/2014 (R) dated 25.06.2014 not yet received by the Petitioner) totalling to Rs.9,68,059/- for the period january 2012 to March 2012 along with Intrerest under Section 11BB of Central Excise Act to the Petitioner.

For Petitioner : Ms.S.Gayathri
(In all W.Ps)

For Respondent : Mr.G.M.Syed Nurullah Sheriff
(In all W.Ps) Standing Counsel for Central Excise

COMMON ORDER

Ms.S.Gayathri, learned counsel on record for writ petitioner in all these six writ petitions, Mr.G.M.Syed Nurullah Sheriff, learned Standing Counsel for Central Excise, who accepts notice on behalf of the lone respondent in all these six writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. This Court is informed that these six writ petitions arise out of one common factual matrix, more importantly, this Court is informed, without any disputation or disagreement, that the central theme/core issue in all these six writ petitions is the same. To put it in a nutshell, that central theme/core issue is refund of CENVAT credit claimed by writ petitioner and rejection of the same by the respondent.

4. Considering the limited scope of the writ petitions on hand and the narrow compass on which instant writ petitions turn, it is not necessary to set out facts in great details. Short facts shorn of elaboration are that writ petitioners filed six revision applications (pertaining to refund claim qua CENVAT credit) in the period between October 2010 and March 2012.

5. There was adjudication and the original authority passed six different orders, sanctioning a part of the claim made by the writ petitioner. These six orders-in-original were carried in appeal by writ petitioners by way of six separate statutory

appeals inter alia under Section 85 of Finance Act, 1994 read with Rule 8 of Service Tax Rules, 1994. To be noted, the Appellate Authority is Commissioner (Appeals - II) and the Appellate Authority passed six separate orders wherein certain heads of refund of CENVAT credit claim was allowed and part relief was granted to appellant (writ petitioner) in the appeals. For the sake of convenience, operative portion of the orders of the original authority in a paragraph captioned 'sanction order' and the operative portion of the orders of appellate authority as contained in the penultimate/ last paragraph of orders in appeal are extracted and reproduced hereunder:

'Order-in-Original No.20/2013:
SANCTION ORDER

I, therefore, sanction a refund of Rs.3,63,244/- claimed by M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. I reject an amount of Rs.4,22,290/- for the reasons discussed above. I hereby direct the assessee to reverse the eligible and ineligible amount in their Cenvat account.

Order-in-Appeal No.316/2015:

24. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel Agents service, Rent a cab service and Forex Exchange service is set aside with consequential relief of refund as provided under the relevant Rule.

ii. disallowing Cenvat credit on Outdoor Catering Service and Business support Service (meal voucher) is upheld.

iii. disallowing Cenvat credit on on the invoices addressed to Mumbai is upheld.

iv. deduction of export turnover to the tune of Rs.2,44,19,463/- as time barred is set aside with consequential relief of refund as provided under the relevant Rule.

25. Appeal is disposed of in the aforesaid terms.

Order-in-Original No.255/2012:

SANCTION ORDER

I, therefore, sanction a refund of Rs.6,44,728/- (Rupees Six Lakhs forty Four Thousands Seven Hundred and Twenty Eight only) to M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. I reject an amount of Rs.2,66,034/- for the reasons discussed above. I hereby direct the assessee to reverse the eligible and ineligible amount in their Cenvat account.

Order-in-Appeal No.298/2015:

18. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel service, Forex Exchange service and Rent a cab service is set aside with consequential relief of refund as provided under the relevant Rule.

ii. disallowing Cenvat credit on Insurance Service and Outdoor Catering (Food Bills) is upheld.

iii. disallowing Cenvat credit on Telecommunication Service is upheld.

19. Appeal is disposed of in the aforesaid terms.

Order-in-Original No.21/2013:

SANCTION ORDER

I, therefore, sanction a refund of Rs.6,56,917/- (Rupees Six Lakhs Fifty Six Thousand Nine Hundred and Seventeen only) to M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. I reject an amount of Rs.1,85,143/- for the reasons discussed above. I hereby direct the assessee to reverse the eligible and ineligible amount in their Cenvat account.

Order-in-Appeal No.303/2015:

20. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel service, and Rent a cab service is set aside with consequential relief of refund as provided under the relevant Rule.

ii. disallowing Cenvat credit on Outdoor Catering Service & Sodexo Meal Voucher and Event Management Service is upheld.

iii. disallowing Cenvat credit on Telecommunication Service is upheld.

21. Appeal is disposed of in the aforesaid terms.

Order-in-Original No.76/2013:

SANCTION ORDER

I, therefore, sanction a refund of Rs.6,66,045/- (Rupees Six Lakhs Sixty Six Thousand and Forty Five only) to M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. I reject an amount of Rs.2,31,707/- for the reasons discussed above. I hereby direct the assessee to reverse the eligible and ineligible amount i.e., Rs.8,97,752/- in their Cenvat account.

Order-in-Appeal No.306/2015:

21. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel service, and Rent a cab service is set aside with consequential relief of refund as provided under the relevant Rule.

ii. disallowing Cenvat credit on Outdoor Catering Service & Sodexo Meal Voucher and Event Management Service is upheld.

iii. disallowing Cenvat credit on the invoices addressed to Mumbai address is upheld.

iv. disallowing Cenvat credit on Telecommunication Service is upheld.

22. Appeal is disposed of in the aforesaid terms.

Order-in-Original No.29/2014:

SANCTION ORDER

I, therefore, sanction a refund of Rs.5,61,515/- (Rupees Five Lakhs Sixty One Thousand Five Hundred and Fifteen only) to M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. The assessee are directed to reverse an amount of Rs.6,37,606/- (refund amount Rs.5,61,515 + ineligible Cenvat Credit Rs.76,091 as detailed in para 7) from their Cenvat account.

Order-in-Appeal No.323/2015:

23. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel service, and Rent a cab service is set aside with consequential relief of refund as provided under the relevant Rule.

ii. deduction of export turnover to the tune of Rs.1,38,11,303/- as time barred is set aside with consequential relief of refund as provided under the relevant Rule.

24. Appeal is disposed of in the aforesaid terms.

Order-in-Original No.40/2014:

SANCTION ORDER

I, sanction refund of Rs.9,14,088/- (Rupees Nine Lakhs Fourteen Thousand and eighty eight only) to M/s.GIL Shared Service Pvt. Ltd Block II & III, Ground Floor, No.184-187, Templesteps, Little Mount, Saidapet, Chennai -15, under Rule 5 of the Cenvat Credit Rules, 2004 read with notifications issued there under and read with Section 11B of the Central Excise Act, 1944 as made applicable to Service tax Law in terms of Section 83 of Finance Act, 1994. The assessee are directed to reverse an amount of Rs.9,68,193/- (refund amount Rs.9,14,088 + ineligible Cenvat Credit Rs.54,105/- as detailed in para 7) from their Cenvat account.

Order-in-Appeal No.322/2015:

21. In view of the foregoing discussions, the Impugned Order

i. disallowing canvat credit on Air Travel service, Rent a cab service and Banking charges is set aside with consequential relief of refund as provided under the relevant Rule.

ii. disallowing Cenvat credit on Outdoor Catering Service (Sodexo Meal Voucher) is upheld.

22. Appeal is disposed of in the aforesaid terms.'

6. Learned counsel for writ petitioner submits that aforesaid orders in appeal have been given legal quietus and neither party has carried it in further appeal. In other words, the orders of first Appellate Authority have attained finality is her say. Learned counsel for writ petitioner, on instructions, submits that writ petitioner is claiming refund in accordance with the orders of first Appellate Authority and is not seeking a penny more.

7. Under such circumstances, respondent in the instant writ petition passed six orders rejecting the refund claim of the writ petitioner. Aggrieved by this six orders, rejecting the refund claim of the writ petitioner, instant writ petitions have been filed.

8. Adverting to the impugned order made by respondent, learned counsel for writ petitioner submits that the refund applications have been rejected on the sole ground that they have been filed beyond one year from the relevant date by placing reliance on Section 11B of Central Excise Act, 1944, which has been made applicable to service tax inter alia by Section 83 of Finance Act, 1994.

9. A perusal of the six impugned orders reveals that the only ground on which the refund claims have been rejected i.e., refund of CENVAT credit is that they have been filed more than 2 $^{1/2}$ years after the relevant date whereas they ought to have been filed within one year from the relevant date.

10. To be noted, it is the stated position and specific case of writ petitioner that a second refund application is not necessary and if the original refund application had been made prior to the original adjudication/appeal are taken up there is no delay. A judgment of Hon'ble Division Bench of this Court in SPIC Ltd. case being Commissioner of Customs Vs. SPIC Ltd. reported in 2014 (12) TMI 1121 was pressed into service in this

regard. However, it was submitted that, before the respondent, an alternate plea, obviously on a demurrer was made by way of giving reasons for the delay citing 2015 floods/deluge in Chennai City. With regard to deluge in Chennai city, the respondent vide the impugned orders has held that the floods in Chennai happened in the first week of December 2015. Writ petitioner has produced orders-in-original, which are also in December 2015, i.e., after the first week of December 2015 and therefore, this cannot be accepted is the basis on which impugned orders have been passed.

11. Therefore, two points now fall for consideration before this Court.

12. Relevant date, when the revision is made as a consequence of a direction of an appellate authority, is the date of such order or direction. This is contained in explanation to Section 11B [(ec) of (B) to be precise] of the 'Central Excise Act, 1944' (hereinafter 'CE Act' for brevity) and relevant date as statutorily explained reads as follows:

> '(B) 'relevant date' means,_
> (a)
> (b)
> (c)
> (d)
> (e)
> (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any Court, the date of such judgment, decree, order or direction.'

(underlining made by this Court to supply emphasis and to highlight)

13. Learned counsel for writ petitioner has submitted relevant particulars by way of a tabulation/table with regard to all six writ petitions and the same reads as follows:

S. No.	PERIOD	OIO No.	AMOUNT SANCTIONED BY ORDER-IN-ORIGINAL Rs.	OIA NO	AMOUNT SANCTIONED BY ORDER IN APPEAL	TOTAL AMOUNT (Amount sanctioned vide order in original + Amount sanctioned vide order in Appeal) Rs.
1	Oct. 2010 to Dec.2010	20/2013 (R) Dated 02.05.2013	3,63,244	316/2015 Dated 27.11.2015	1,55,314	5,18,558
2	Jan 2011 to March 2011	255/2012 (R) Dated 31.12.2012	6,44,728	298/2015 Dated 30.10.2015	1,47,892	792,620
3	April 2011 to June 2011	21/2013 (R) Dated 02.05.2013	6,56,917	303/2015 Dated 27.11.2015	95,826	7,52,743
4	July 2011 to Sep 2011	76/2013 (R) Dated 04.07.2013	6,66,045	306/2015 Dated 27.11.2015	1,76,079	8,42,124
5	Oct 2011 to Dec 2011	29/2014 Dated 04.06.2014	5,61,515	323/2015 Dated 27.11.2015	76,091	6,37,606
6	Jan 2012 to March 2012	40/2014 Dated 25.06.2014	9,14,088	322/2015 Dated 27.11.2015	53,971	9,68,059
				TOTAL		45,11,710

14. This takes us to some of the significant dates in the instant matter. The undisputed dates of significance are that, as in the first of the six writ petitions viz., W.P.No.22224 of 2019, the first refund application was made on 28.10.2011, the original order by the original authority was made on 02.05.2013, the order of the Appellate Authority in a statutory appeal was made on 27.11.2015, one year from the date of the order of Appellate Authority expired on 26.11.2016 and the second refund claim was filed on 11.05.2018. The dates have been given with specificity for the sake of clarity in the first of the six writ petitions. Though there is some difference in the dates in the

other writ petitions, it does not make any difference to the principles that are being considered. Therefore, this Court is not embarking upon the exercise of setting out the dates in the other five writ petitions with specificity as they make no difference to the common principle emerges with clarity.

15. With regard to the first point that a second refund application is not necessary, the relevant paragraph is paragraph 6 in SPIC Ltd. case and the same reads as follows:

> '6. When there is no provision for filing a second refund application, the question of limitation does not arise. Further, the time limit under Section 27(1) of the Customs Act would be for the first application and the appeal is a continuation of the original proceedings and therefore there can be no limitation in respect of the proceedings pursuing the refund claim. Accordingly, both the questions of law are applications were rejected by the Original Authority on 09.03.2004 and 13.03.2004 stating that the said applications have been filed belatedly. As against this order of the Original Authority, further appeals have been filed before the Commissioner (Appeals), who dismissed the appeals by order dated 31.08.2004, thereby confirmed the second rejection order of the Original Authority. Aggrieved by such an order, the respondent went before the Tribunal, which allowed the appeal by order dated 10.11.2006. Aggrieved by the said order of the Tribunal, the Revenue is before this Court raising the above-mentioned substantial questions of law.'

16. With regard to the second point that floods were only in the first week of December 2015. It is incorrect and untenable. It is untenable because the impact of the deluge lasted for a couple of months before the activities in the City could rescind to normalcy. Therefore, to say that floods was only in the first week of December is of no consequence.

17. In the instant case, it is to be noted that writ petitioner's counsel, on instructions, submits that they are seeking refund only in accordance with the order of Appellate authority and they are not seeking a penny more.

18. There is no disputation or disagreement that the refund claim is under Rule 5 of CENVAT Credit Rules, 2005.

19. Adverting to Rule 5 of CENVAT Credit Rules, 2005, learned counsel for respondent submitted that it may be

necessary to examine the actual inputs and out put. A perusal of the impugned order reveals that those are not the grounds on which refund applications have been rejected. Refund applications have been rejected only by taking into account relevant date within the meaning of clause (ec) of explanation B to Section 11B of CE Act holding that the refund applications have not been made within one year from the relevant date. In the instant case, in the light of Hon'ble Division Bench Judgment i.e., SPIC Limited case that second refund application is not necessary this basis itself pales into insignificance. To be noted, SPIC judgment arises under Customs Act, 1962, but the principle governing refund nonetheless is the same.

20. Be that as it may, a perusal of paragraph 6 of SPIC Limited judgment of Hon'ble Division Bench, which has also been extracted and reproduced supra, reveals that paragraphs 6 refers to the (substantial) questions of law. For better appreciation, it is necessary to extract the (substantial) questions of law as formulated by Hon'ble Division Bench and the same read as follows:

> '1. Whether the claim made by the first respondent for refund after an expiry of seven years in violation of the time limit fixed under Section 27(1) of the Customs Act, 1962 can be considered by the second respondent appellate Tribunal as a valid claim under the provisions of the Customs Act?
>
> 2. Whether the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 10.11.2006 allowing the claim for refund of the first respondent after the expiry of seven years, contrary to the time limit fixed by the Section 27(1) of the Customs Act, 1962, is maintainable in law?'

21. In the light of all that have been set out supra, this Court is convinced that the impugned orders are liable to be set aside holding that the refund applications of the writ petitioner claiming CENVAT credit refund cannot be rejected on the ground that it is beyond one year from the relevant date. This Court has no hesitation in further holding that writ petitioner will be entitled to refund in accordance with the order of the Appellate Authority. Respondent is directed to process the refund applications and make refund in each of the six applications to the writ petitioner in accordance with law, as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order.

22. These writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner of GST & Central Excise
Guindy Division
Chennai South Commissionerate
E.V.R.Perriyar Building, 3rd Floor
690 Anna Salai, Nandanam,
Chennai - 600 035.

+1 cc to Mr.G.M.Syed Nurullah Sheriff, Advocate, S.R.No.64726

+1 cc to M/s.S.Gayathri, Advocate, S.R.No.65396

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MG(CO)
SSM(05/09/2019)