CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.40989 of 2015

(Arising out of Order-in-Appeal No.51/2015 (STA-II) dated 10.02.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai)

SPI Technologies India Pvt. Ltd. .... Appellant
No.117/1, Arihant e-park,
Lal Bahadur Shashtri Road,
Adayar,
Chennai-600 020.

VERSUS

Commissioner of GST & Central Excise ... Respondent
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

APPEARANCE:

Ms. Radhika Chandrashekar, Advocate for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40704/2026

DATE OF HEARING: 17.02.2026
DATE OF DECISION:08.06.2026

Per: Shri Ajayan T.V.

M/s. SPI Technologies India Pvt. Ltd., the appellant herein, is challenging the Order-in-Appeal No.51/2015 (STA-II) dated 10.02.2015 (the impugned order).

2. The brief facts are that the Appellant is a Software Technology Park of India (STPI) Unit registered as a provider of Business Auxiliary Service ('BAS' for short) and exporting IT enabled services to various countries. The appellant is stated to have filed nine refund claims for refund of total amount of Rs 2,47,85,457/- under Notification No 12/2005-ST dt.

19.4.2005 seeking refund of service tax paid by them on the input services utilized for their export service.

3. The appellant was issued an SCN No.77/2010 dated 26.11.2010 proposing to deny the refund on the grounds that (a) the appellant did not file declaration prior to export of services as required vide clause 3.1 of the Notification and that (b) the appellant had availed cenvat credit of the service tax paid on input services, which was claimed as refund, in contravention of clause (e) of para 2 of the said Notification. The appellant in its reply stated that they had not availed any cenvat credit on input and input services and that it was by error that the amounts were shown as cenvat credit. It was submitted that their accounts and balance sheet would reflect that they have not availed any cenvat credit on inputs or input services which is also evidenced by the statutory tax audit report in para 22(a) furnished by their statutory auditor in compliance of Income Tax Act, 1961. An alternate contention was put forth that even otherwise they are entitled to avail refund of unutilized credit of input services under Rule 5 of the Cenvat Credit Rules, 2004. After due process of law, the adjudicating authority rejected the refund claims on the aforesaid grounds raised in the SCN. Aggrieved by the Impugned Order, the appellant filed an appeal before the Commissioner of Service tax (Appeals-II), who however, rejected the appeal. Hence, aggrieved by the impugned order of the Appellate Authority, the Appellant has preferred this appeal.

4. Ms. Radhika Chandrashekar Ld. Advocate appearing for the appellant contended that the rejection of the appeal in the Order in Appeal on the ground that cenvat credit was availed is incorrect as once credit is availed and reversed, it is as good as not availing credit. Ld. Counsel argued that the observation in the OIA in Para 10 that the appellant is appearing to make contradictory claims regarding availment of cenvat credit is incorrect as in Para 3.1 of the OIO, it is accepted that although the Appellant had availed cenvat credit on input services, the same has been reversed. It is also accepted that the reversal was communicated to the Department vide letter dated 24.04.2010 and therefore, there can be no contradictory claims regarding availment of cenvat credit as it is an accepted fact that reversal had taken place.

5. Ld. Counsel further contended that the Appellant is subject to tax audit under Section 44AB of the Income Tax Act, 1961 and Para 22(a) of the tax audit report contains a specific column as 'amount of modified value added tax credits availed or utilized during the previous year and its treatment in the profit and loss account and the treatment of outstanding modified value added tax credit in the accounts'. In all Tax Audit Reports for the relevant period covered by the Show Cause Notice, Para 22(a) has been stated as NIL and therefore, there is no violation of Para 2(e) of Notification 12/2005. There is no discussion in the OIO and OIA with respect to this contention. It was argued that the Tribunal in the case of ***M/s JCT Limited Vs, CCE 2015 (2) TMI 600*** has held that when the benefit of the exemption notification is subject to the condition that no duty credit is taken, the assessee is to be treated as not having taken the Cenvat credit and would be eligible for the exemption benefit when the credit taken has been reversed. It was submitted that the Tribunal in the case of ***Khyati Tours & Travels Vs. CCE 2011 (24) S.T.R. 456 (Tri. Ahmd.)*** held that the benefit of the exemption would be available as the appellant had reversed the wrongly availed Modvat credit along with interest and the same will have the effect as if no credit was availed by the appellants. The Tribunal in the case of ***Dexter Travel Solutions Pvt. Ltd. Vs. CST (2024) 17 Centax 270 (Tri.-Mad)*** held that the assessee was eligible for abatement under exemption Notification when assessee availed cenvat credit and also simultaneously availed benefit of the Exemption Notification, but had subsequently reversed the cenvat credit amount along with interest.

6. Ld. Counsel further argued that the Appellant is eligible for rebate as all the required conditions for sanctioning the refund in terms of Rule 5 of the Export of Service Rules, 2005 and Notification No. 12/2005 have been duly complied with. One of the requirements prescribed in Notification No. 12/2005 is that the declaration is to be filed with the Jurisdictional Assistant Commissioner of Central Excise and the Appellant has filed the declaration for the relevant period in the following manner.

S. No	Period	Declaration
1	01.04.2006-31.03.2007	Declaration not filed
2	01.04.2007-31.03.2008	Declaration filed
3	01.04.2008-30.09.2008	Declaration filed
4	01.10.2008-31.03.2009	Declaration filed belatedly

7. It was further argued that proposing to deny the entire claim for the period 01.04.2006 - 31.03.2009 on the ground that no declaration has been filed before the Assistant Commissioner of Central Excise in the manner prescribed is unjustified as a substantial benefit cannot be denied merely because of certain technical lapses. Ld. Advocate relied on the decisions in ***Aditya Birla Minacs Worldwide Ltd. vs CST, 2020-TIOL-780-Cestat-Bang, Crest Premedia Solutions Pvt. Ltd. vs CCE, 2015(38) STR 46 (Tri.-Bom), Mobis India Ltd. vs Commissioner of GST & Central Excise (2024) 24 Centax 311 (Tri.-Mad),*** and ***Convergys India Services P. Ltd. vs CST 2012 (25) STR 251 (Tri.-Del)*** in this regard.

8. Ms. O.M. Reena, Ld. AR appearing for the respondent reiterated the findings in the impugned order.

9. We have heard the rival submissions, perused the appeal records and the citations submitted.

10. The sole issue that arises for our consideration is whether the denial of refund claims, on the aforesaid grounds of purported non filing of declaration and noncompliance with clause (e) of para 2 of the notification, is tenable.

11. We have perused the notification and find that clause (e) stipulates that the appellant should satisfy the condition that no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed. It is seen that the Adjudicating Authority in his Order in Original has recorded that the appellant has also reversed their cenvat credit already taken and the same was reflected in the ST 3 half yearly return filed for the period from October 2009 to March 2010 and that

the facts were indeed conveyed to the Department vide their letter dated 24.04.2010. But for having availed the credit, despite reversing the same, it was chosen to treat it as noncompliance of the said condition. The lower authorities have also not controverted the categorical assertion of the appellant that such non availment also stood certified in the mandated tax audit report prepared by their statutory auditor. In such circumstances, we find the reliance placed by the appellant on the aforecited Tribunal decision that hold that reversal of cenvat credit tantamount to not having taken the Cenvat credit, would settle this issue in the appellant's favour.

12. As regards the issue of filing of declarations, we find the reliance placed by the Appellant on the aforesaid decisions indicate that it has been the consistent view that substantial benefit cannot be denied for such technical lapses. In this regard it is apposite to reproduce the oft cited observations of the Honourable Supreme Court in ***Mangalore Chemicals & Fertilizers Ltd v. Deputy Commissioner, 1991 (55) ELT 437 (SC),*** wherein it has been held as under:

"11……. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. ***There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve****." (****emphasis supplied****)*

13. The Apex Court has gone on to emphasise in the said decision that a distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. It is also

noticed that the Apex Court has yet again, in the decision in ***Govt. of Kerala v. Mother Superior Adoration Convent, 2021 (376) ELT 242 (SC),*** held as under:

> 23. It may be noticed that the 5-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it [see Quinn v. Leathem - [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra - (1968) 2 SCR 154 at 162, 163].
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> 24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, **the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object.** And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench. ***(emphasis supplied)***

14. The declaration is to furnish the details of inputs and input services that have gone into the export of services done by the Appellant. Admittedly, there is no dispute that the appellant is engaged in export of services, had paid the service tax on the inputs and input services and that these services were used for providing export services by the appellant. In any event, these are details that are always verifiable from the appellant's records. Time and again, this Tribunal and higher judicial forums have held that taxes are not to be exported. ***Repro India v UOI, 2009 (235) ELT 614 (Bom)*** refers.

15. It is also pertinent to note that the Apex Court in its recent decision in ***State of U.P. v Anjuman Ishaat-E-Taleem Trust & Ors, 2026 INSC 597***, has held as under:

"**30.** It may, at this point, be relevant to remind ourselves that law must also strive to be pragmatic. Reference can profitably be made to the decision of this Court in ***State of Nagaland v. Lipok AO*** [(2005) (SCC 752] wherein it was held that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred…"

16. Under these circumstances, we are of the considered view that in the single instance the declaration was not filed, the appellant can be given an opportunity to file the same, if not filed already, and all these claims are to be processed without any further delay.

17. In light of the aforesaid discussions, the impugned order cannot sustain and is liable to be set aside. Ordered accordingly.

The appeal is allowed with consequential relief(s) in law if any.

(Order pronounced in the open court on 08.06.2026)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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