CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. IV

Service Tax Appeal Nos.41236 - 41239 of 2016

(Arising out of Order-in-Appeal Nos. 134-137/2016 (STA-I) dated 17.03.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai)

M/s. Andritz Technologies Private Limited ...Appellant
The Lords, Block – II, Plot No. 1 & 2, (NP),
III Floor, Thiru-vi-ka Industrial Estate,
Jawaharlal Nehru Road, Ekkatuthangal,
Guindy, Chennai – 600 032.

Versus

Commissioner of GST and Central Excise ...Respondent
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

APPEARANCE :

CA. Jatin Harshed Sanghvi, Consultant for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER Nos.40839-40842/2026

DATE OF HEARING : 30.06.2026
DATE OF DECISION: 01.07.2026

The aforesaid four appeals are being disposed by way of a common order involving an identical question of law.

2. Aggrieved by the orders passed by the Ld. Commissioner (Appeals) in the impugned cases, the appellant has filed the said appeals assailing the same. Briefly stated, the assessee renders Business Auxiliary Service and Consulting Engineer Service and is an exporter of service. The appellant was granted refund of unutilized input tax credit on export of services for, four quarters

during the period October 2009 to September 2010. The said refund amount aggregated to Rs.11,48,550/-. Subsequently, a demand show cause notice came to be issued to them. Challenging refund amount, as indicated in table below

Details of Appeal before the Commissioner (Appeals)

Period of Dispute	**OIO Ref#**	**A. No. Ref#**	**Refund Sanctioned vide OIO**	**Refund contested**
October 2009 - December 2009	4/2011 dt 05.01.2011	22/2011 dt 12.04.2011	243,742	83,866
January 2010 - March 2010	5/2011 dt 05.01.2011	21/2011 Dt 12.04.2011	263,525	49,146
April 2010 - June 2010	57/2011 dt 21.02.2011	43/2011 dt. 31.05.2011	428,745	49,862
July 2010 - September 2010	58/2011 dt. 21.02.2011	44/2011 dt 31.05.2011	212,538	57,102
Total			**1,148,550**	**239,976**

Details of Appeal before the Hon'ble CESTAT

Sl	**Appeal Ref filed before Hon'ble CESTAT**	**Order of Commissioner Appeals**	**Period of Dispute**	**Amount of Refund claimed**
1	ST/41236/2016	134 of 17/03/2016	October 2009 - December 2009	83,866
2	ST/41237/2016	135 of 17/03/2016	January 2010 - March 2010	49,146
3	ST/41238/2016	136 of 17/03/2016	April 2010 - June 2010	49,862
4	ST/41239/2016	137 of 17/03/2016	July 2010 - September 2010	57,102
	Total			**239,976**

pertaining to the credit availed by the assessee, after the last date of export invoice issued for the respective quarter.

2. The challenge in the aforesaid appeals lie to the interpretation of Notification No. 5/2006-CX (NT), dated 14th March 2006, that provides for refund of Cenvat credit availed, in the context of export of service. Condition No. 4 of the said notification, reads as:-

> *4. The refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit*

allowed under rule 3 of the said rules against goods exported during the quarter or month to which the claim relates (hereinafter referred to as "the given period")

It is this clause that is the subject matter of the dispute in the impugned appeals.

3. The case of the department is, that as per Notification No. 5 of 2006-CE(NT), dated 14th March 2006, refund is allowed only in those circumstances, where a manufacturer or a provider of output service is not in a position to utilize the input service credit allowed against goods exported by the assessee during the quarter or the month to which the claim relates. It is therefore, their submission that the credit availed in a quarter beyond the date of the last export invoice could not be considered for refund, towards rendering of the service exported/ utilized in the manufacture of the final product exported.

4. The bonafides of the credit availment are not in dispute. It is a given fact that the refund claims were sanctioned in respect of input credits availed beyond the date of last export invoice of the quarter or the month to which the claim related. However, it need be noted that a narrow restrictive meaning being assigned to the impugned condition 4 of the Notification would lead to defeating the very object of the notification, besides causing administrative chaos and deprive the assessee of their rightfully intended benefit in law. When the Notification itself provides for refund of such credit as could not be utilized and provides for cash refund of such credits, placing artificial extraneous fetters is unjust denial to a legal entitlement. As a certain amount of credit could not be

utilized in the said quarter, giving such a narrow meaning would render the Notification fruitless and would negate the very purpose and objective of the said Notification, as to not export the tax component. It would be, therefore appropriate to state that refund is to be allowed to the extent credit availed in the relevant quarter that remains unutilized till the time of filing of the refund claim.

5. In a continuous process of operation, it is bound to happen that there would always be some overflow of such credit remaining unutilized. Depriving the assessee of such rightful benefits admissible to them in law would jeopardize the very operation of the schemes of tax credit availment and utilization. I am of the view that a mere timing difference in availing admissible cenvat credit within the same quarter would not become a reason for denial of the refund as long as the admissibility of such cenvat credit is not disputed. This is more so as refund in terms of the said Notification 5/2006- CE(NT) is considered on a quarterly basis and not on the basis of each singular export event. What is material and what is germane to the scheme, is the ascertainment of the total unutilized ITC available at the end of the quarter. The time of availing of the said credit within the quarter would therefore, not be a substantive ground for denial of credit if otherwise admissible. Such parochial interpretation of a beneficial piece of legislation would render the notification devoid of its purpose and objective, making it redundant and nugatory as it would be against the very spirit of the Notification and the essence of Export of Service Rules.

6. Further as the refund claims are required to be filed quarterly in terms of the said Notification, applying such strict contours in disregard of Rule 5 of the Cenvat Credit Rules would defeat the objective of the scheme of legislation, to prevent cascading effect of taxes and non-export of a tax, i.e., to make the exports as zero rated to tax. It goes without saying that a harmonious reading of the provisions will have to be undertaken to effectuate the provision in a meaningful manner. It is also noted that rejection of such proportionate refund by giving the Notification a very restrictive interpretation is again a futile exercise as cenvat credit rejected against a claim of a particular quarter would certainly be available for refund in the subsequent quarters.

7. Moreover, it is noticed that it is not for the first time such a view is canvassed. It is a given fact that if a certain credit is admissible in a particular month, it obviously has to be either be in the preceding or the succeeding month as there is no dispute about the export undertaken, in respect of which the rightful availment of cenvat credit. There obviously has to be a time lag between the date of availment of such credit of service tax paid on input services and the claim for refund thereof. This is so as the services are required to be consumed and the finished goods/ services have to be exported. It is an undisputed fact that the services for which the impugned question of credit were utilized for provisioning of exported output service. It is only thereafter that the refund claim is required to be filed. Unless these conditions are sequentially met, the admissibility of the refund claim would

not materialize, more so when the rightful availment of the accumulated cenvat credit has not been disputed by the authorities.

8. The learned consultant for the appellant has sought to seek support in the matter from the Tribunal's decision in the case of Commissioner of C.Ex., Mysore versus Chamundi Textile – STO 2010 CESTAT 874 – CESTAT BANGALORE, to support their stance. All that is required to be considered is whether the appellants had accumulated Cenvat Credit or not. I am therefore in agreement with the pleadings rendered by the appellant and hold the admissibility of the refund claim allowed in the first instance.

9. In view of the discussions aforesaid, I do not find enough merit in the order of the appellate authority, which is therefore liable to be rejected.

10. Given my aforesaid findings the order of the lower authority is set aside and the appeals filed are allowed.

(Order pronounced in the open court 01.07.2026)

(RAJEEV TANDON)
Member (Technical)

psd