CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO - 1

EXCISE Appeal No. 12471 of 2018-SM

(Arising out of OIA no. CCESA-SRT-APPEAL-PS-150-2018-19 dated 19/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Shalu Synthetics Appellant

9/a-b, Behind Sakar Healthcare, Changodar,
AHMEDABAD,
GUJARAT
382210

-VERSUS-

C.C.E.-Daman Respondent

CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD,
GUJARAT
380009

Present For the Appellant : Shri S. Bissa, Adv.

Present For the Respondent : Shri S.K. Shukla, Supdt. (AR)

CORAM:
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11518 /2019

Date of Hearing: 12/04/2019

Date of Decision:08.08.2019.

RAJU

This appeal has been filed by M/s Shalu Synthetics Pvt. Ltd. against denial of interest on a refund already sanctioned to the appellant.

2. Ld. Counsel for the appellant pointed out that they had filed the refund claim on 06/12/2007 under Rule 5 of the Cenvat Credit Rules for refund of unutilized Cenvat Credit lying in the balance at the time of surrendering of Central Excise Registration. A Show Cause Notice was issued to them on 31/01/2008 and the same was adjudicated to Dy. Commissioner who vide the Order in original dated 15/03/2008 rejected the refund claim. Thereafter, the appellant filed the refund claim under section 11B of the Central Excise Act, 1944 on 25/07/2008. The same was rejected by Dy. Commissioner on 11/12/2008. The appellant challenged both the rejections, under Rule 5 of Central Excise Rules, 2002 as well as rejection under section 11B of the Central Excise Act, 1944, before Commissioner (A). Such rejection was upheld by Commissioner (A) vide Order in Appeal dated 31/03/2009.

The said order of Commissioner (A) was challenged before the Tribunal and Tribunal vide order no. A/11503/2014 dated 10/06/2004 set aside the impugned order and allowed the appeal with consequential relief. Consequently, the appellant filed a refund claim on 25/06/2014. Simultaneously, Revenue had filed an appeal against the Tribunal order before Hon'ble High Court of Bombay along with the stay application. The appellant meanwhile filed the application before the Tribunal for implementation of the Tribunal order dated 10/06/2014. Tribunal directed the authorities to sanction the refund claim if no stay is obtained from High Court within 6 weeks. The said refund claim was thereafter sanctioned on 10/04/2015. However, interest of the said refund was not sanctioned by the Original Adjudicating Authority on the ground that the said claim was sanctioned in pursuance of Tribunal order without specifying if the said refund was sanctioned under Rule 5 of Central Excise Rules or under section 11B of the Central Excise Act, 1944. The Ld. Counsel relied on the decisions of the Tribunal in the case of Annapurana Plasto Pack P Ltd. 2004 (167) ELT 529 (Tri-Mumbai) wherein it has been held that liability to pay interest arise not only in case of refund but also refund of MODVAT credit. He also relied on the decision of Tribunal in the case of Birla Texture Ltd. 2010 (257) ELT 146 (Tri) where it was held that refund of pre deposit cannot be allowed by way of credit in the CENVAT account if the assessee has started to avail exemption. It was also found that in the said case that in such circumstances, the assessee is also entitled to interest. Ld. Counsel also relied on the decision of Hon'ble Apex Court in the case of Ranbaxy Laboratories Ltd. 2011 (273) E.L.T. 3 (SC) wherein relying on the circular of CBEC no. 670/61/2002-CX dated 01/10/2002, it was held by Hon'ble Apex Court that interest for delay after expiry of three months from the date of receipt of application has to be granted in case of refund under section 11(B) of the Central Excise Act, 1944.

3. Ld. AR relies on the impugned order. He pointed out that the appellant had not reversed the amount in their RG-23 account at the time of filing the refund and technically the said amount was available in the account of the appellant. He argued that in these circumstances, the balance was throughout maintained by the appellant and, therefore, no interest can be demanded.

4. I have considered rival submissions. I find that the OIO relies on the following observations in the remand order of the Tribunal to deny the claim of interest:

> *"It can be noted that the refund of the appellant does not fall under the any of the rules and that there are no express or implicit provisions in the*

Central Excise Act and Cenvat Credit Rules for grant of refund of Cenvat Credit balance lying unutilized at the time of closure of the unit.

4.1 I find that Hon'ble High Court of Karnataka in the case of Slovak India Trading Company Pvt. Ltd. 2006 (201) ELT 559 (Karn.) has observed as following:

4. *Admitted facts would reveal of a claim of cash refund and admitted facts would reveal of rejection at the hands of the Assistant Commissioner and also the appellate authority. The Tribunal has chosen to allow the claim application on the ground that refund cannot be rejected when the assessee goes out of Modvat scheme or when the Company is closed. The argument is that there is no provision for refund in terms of Rule 5 of Cenvat Credit Rules, 2002. Rule 5 reads as under:*

> ***"Rule 5. Refund of CENVAT Credit:*** *When any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification:*
>
> *Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty."*

5. *There is no express prohibition in terms of Rule 5. Even otherwise, it refers to a manufacturer as we see from Rule 5 itself. Admittedly, in the case on hand, there is no manufacture in the light of closure of the Company. Therefore, Rule 5 is not available for the purpose of rejection as rightly ruled by the Tribunal. The Tribunal has noticed that various case laws in which similar claims were allowed. The Tribunal, in our view, is fully justified in ordering refund particularly in the light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme. In these circumstances, we answer all the three questions as framed in para 17 against the Revenue and in favour of the assessee.*

4.2 It can be seen that the Hon'ble HC has held that there is no bar under Rule 5. The three questions put before the Hon'ble High Court was as follows:

(a) Whether under the facts and circumstances of the case the Tribunal is right in ordering for refund even <u>if there is no provision in Rule 5 of Cenvat Credit Rules 2002, to refund the unutilized Credit</u>?

(b) Whether under the facts and circumstances of the case the Tribunal is right in ordering for refund even if there is no production and there is no clearance of finished goods?

(c) Whether under the facts and circumstances of the case the Tribunal is right in holding that respondent is entitled for refund even if it goes out of Modvat Scheme or Company is closed?

All the questions have been answered in the favour of assessee.

5. It can be seen from the above discussion that Hon'ble High Court has held that there is no provision for grant of refund in rule 5 under the present circumstance. The Hon'ble High Court, however, allows the refund. The lower authorities have followed the ratio of this decision. Thus the present proceeding which follow the decision of Hon'ble High Court also conclude with the same ratio as laid down by the Hon'ble High Court of Karnataka. Thus, the refund has been granted following the ratio of Hon'ble High Court decision in case of Slovak India Trading Company Pvt. Ltd. (supra) honouring judicial discipline. The refund is, therefore, not sanctioned under any express provision of law. In these circumstances, when the refund is not under any provisions of Central Excise Act, the provisions of the act relating to interest do not apply to the facts of the case.

6. The appeal is, therefore, dismissed.

(pronounced in the open court on 08.08.2019)

(Raju)
Member (Technical)

Diksha