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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12508 of 2018

[Arising out of Order-in-Original/Appeal No OIA-VAD-EXCUS-002-APP-126-2018-19 dated 27.06.2018 passed by Commissioner (Appeals) Central Excise & ST, Vadodara]

Koshambh Multitred Private Limited .... **Appellant**
301-302, Gamthi Complex, Opp. Baroda Productivity
Council, BPC Road, Alkapuri, Vadodara, Gujarat

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri S.R. Dixit, Advocate for the Appellant
Shri Shri S.N. Gohil, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/11111 / 2020

DATE OF HEARING : 14.02.2020
DATE OF DECISION : 05.06.2020

RAJU :

This appeal has been filed by M/s. Koshambh Multitred Private Limited against denial of refund of Cenvat credit lying in their account.

2. Learned Counsel for the appellant pointed out that the appellant are traders of taxable goods and have opted Central Excise registration as they were getting goods manufactured from their job workers out of the inputs and packaged material supplied to them. On 18.11.2004, they filed refund claim for Rs.21,96,532/- before the Adjudicating Authority for the credit lying with them in respect of goods exported from their job workers premises directly in terms of Rule 5 of Cenvat Credit Rules, 2004. In the first round of litigation, the subject of dispute was if the appellant is required to file refund claim with authorities having jurisdiction over the job

worker's premises. The matter was settled by this Tribunal vide order dated 12.08.2009 holding that the appellant are entitled to file refund claim with their own jurisdictional authorities. During this period, the appellant had utilized a large part of the credit and the credit reduced from Rs. 21,96,532/- to Rs. 6,28,694/-. The learned Counsel claimed that they are entitled to refund of the said balance amount of Rs. 6,12,694/- as that arises on account of export of goods and is covered under Rule 5 of Cenvat Credit Rules, 2004.

3. Learned Authorised Representative relies on the impugned order.

4. I have gone through the rival submissions. I find that the sole reason for which the refund has been rejected is that the appellant have utilised a substantial part of the credit while the matter was in dispute. It has been asserted in the order that they might have further utilized the credit and may have reduced the same to nil. I find this observation absolutely baseless and unconvincing. Before taking any decision assuming what might have happened, it is duty of the Commissioner (Appeals) to verify the facts. The impugned order also states that if the appellant had debited the said claim amount at the time of filing refund, it would have got blocked for further utilization and they would have become entitled for the refund subject to submission of the various documents by them as was required for claiming the refund. But, as they failed to block the said credit and the same was continuously utilized by them, the Condition No. 5 of the Appendix prohibiting the refund in such situation would debars them from such refund claim. The Condition -5 of the Notification No. 11/2002-CE (NT) dated 01.03.2002 reads as follows:-

> "The refund is allowed only in those circumstances where a manufacturer is not in a position to utilize the credit of the duty on inputs allowed under Rule 3 of the said rules against goods exported during the quarter or month to which the claim relates."

5. I find that the refund has been rejected arbitrarily and on presumption-assumption basis. The appellant had filed refund claim in the year 2004 and matter was under litigation for long time and it is almost for 16 years now. It would be wrong to expect the assessee to hold on to credit for such a long period. The condition 5 of the aforesaid Notification No. 11/2002-CE (NT) does not mean that the appellant should not be able to utilize the credit at all. It is to be read harmoniously to mean that the refund should be allowed for the manufacturer if the assessee is not in a position to utilize the Cenvat credit within a reasonable period.

In view of above, I do not find merit in the impugned order the same is set-aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 05.06.2020*)*

(Raju)
Member (Technical)

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