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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : AHMEDABAD
O-20, NEW MENTAL HOSPITAL COMPOUND, MEGHANI NAGAR, AHMEDABAD - 380016

Dated: 29 11 2016

File No. :-E/448 2010

In the matter of :-

C.C.E. & S.T.-Ahmedabad-iii (Appellant)
(Appellant as per address below)

Vs

Gujarat Ambuja Export Ltd (Respondent)
(Respondent as per address below)

I am directed to transmit herewith a certified copy of Order No. : **A/11554/2016** dated : 21/11 2016 passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Assistant Registrar
CESTAT - AHMEDABAD

S.NO, Case Number, Name & Address of Appellant :-

1 E/448/2010 C.C.E. & S.T -Ahmedabad-iii
CUSTOM HOUSE... 2ND FLOOR
OPP. OLD GUJARAT HIGH COURT,
NAVRANGPURA,AHMEDABAD
GUJARAT-380009

S.NO, Case Number, Name & Address of Respondent :-

1 E/448/2010 Gujarat Ambuja Export Ltd
Kadi-thol Road Tal-kadi,
MEHSANA
GUJARAT

आयुक्त (अपील) ...
सीमा शुल्क, ...
अपीलीय ...

09 DEC 2016

आवक क्रमांक ...

Copy To :-

1. Chief Commissioner Customs & Central Excise :**Ahmedabad**
2. Commissioner Customs & Central Excise (Appeal) :**Ahmedabad-iii**
3. O/o Commissioner (AR) CESTAT, Ahmedabad
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12. The ICFAI Society
13. Advocate(s) / Consultant(s) Representative

ANAND NAINAWATI ADV
354-B(3RD FLOOR) SAKAR-VII NEHRU
BRIDGE CORNER ASHRAM ROAD
AHMEDABAD-9

29/11/16

Assistant Registrar
CESTAT - AHMEDABAD

SMC-D-15*6

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

Appeal No : **E/448/2010**

(Arising out of OIA-403/2009-AHD-III-KCG/CE/COMMR-A- dated 21.12.2009, passed by Commissioner (Appeals) Central Excise & Service Tax, Ahmedabad)

Commissioner of Central Excise & S.T., Ahmedabad : Appellant (s)

VERSUS

M/s. Gujarat Ambuja Export Limited : Respondent (s)

Represented by :

For Appellant (s) : Shri S.N. Gohil, Authorised Representative
For Respondent (s) : Shri Anand Nainawati, Advocate

For approval and signature :

Dr. D.M. Misra, Hon'ble Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CORAM :

Dr. D.M. Misra, Hon'ble Member (Judicial)

Date of Hearing / Decision : 21.11.2016

ORDER No. A/11554/2016 Dated 21.11.2016

Per : Dr. D.M. Misra;

Heard both sides and perused the records.

2. This appeal is filed by the Revenue against OIA No. 403/2009-AHD-III-KCG/CE/COMMR-A- dated 21.12.2009 passed by Commissioner (Appeals), Central Excise Ahmedabad.

3. The facts in brief are that the appellant is engaged in the manufacture and clearance of De-oiled cake of Soyabean falling under Chapter 15 of Central Excise Tariff Act, 1985 attracting 'Nil' rate of duty. They had claimed cenvat credit on the inputs used in relation to their said final product cleared for export under bond. Consequently, they filed cash refund of accumulated CENVAT credit for export clearances made during the period October 2007 to December 2007 under Rule 5 of Cenvat Credit Rules, 2004. Alleging that De-oiled cake of Soyabean attracts nil rate of duty, cash refund of accumulated credit was denied to them by the adjudicating authority. On appeal before the Commissioner (Appeals), the same was allowed. Hence, the Revenue is in appeal.

4. Ld. AR for the Revenue reiterates the grounds of appeal and submitted that since the final product was exempted they were not eligible to avail credit on the inputs and consequently cash refund of the credit under Rule 5 of CCR, 2004.

5. Ld. Advocate Shri Anand Nainawati for the appellant submits that eligibility for cash refund of accumulated credit under Rule 5 of Cenvat Credit Rules in relation to export of final products attracting nil rate of duty is no more res integra in view of the judgment of Hon'ble High Court of Himachal Pradesh in the case of CCE vs. Drish Shoes Limited - 2010 (254) ELT 417 (H.P.) which has been followed by the Tribunal in the case of IBM Daksh Business process Services (P) Ltd. Vs. CCE,Delhi-III 2015 (37) S.T.R 833 (Tri.-Del.).

6. I find that the aforesaid issue has been settled by the decision of Hon'ble High Court of Himachal Pradesh in the case of CCE vs. Drish Shoes Limited (supra). Their Lordships observed as:

> **16.** The Scheme of CENVAT Credit Rules, 2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows that CENVAT credit/refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading of Rule 3 and sub-rule (1) of Rule 5 of the CENVAT Credit Rules, 2002, as also the Rules of 2004, so as to avoid indirect double taxation on inputs. However, this rule is not absolute. It is subject to exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.
>
> **17.** Sub-rule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in case of dutiable goods. It appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for CENVAT could not be claimed in respect of input of those goods, at least under the aforesaid exception clause. To overcome this kind of anomalous situations, exception clause contained in sub-rule (6) of Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.
>
> **18.** Learned counsel for the appellant argued that term 'excisable goods' used in sub-rule (6) of Rule 6 of 2004 Rules, meant only dutiable goods. Submission has been noticed only to be rejected.
>
> **19.** A Division Bench of Bombay High Court in 2009 (235) E.L.T. 614 (Bom.), *Repro India Ltd. v. Union of India*, while dealing with a similar situation and interpreting the provisions of Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, has held that

expression " excisable goods" is wider than the expression " exempted goods", as it includes both dutiable as also exempted goods.

20. In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No. 1 is answered accordingly.

21. As regards question No. 2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final products which are exempt from duty, can claim refund of CENVAT. So, this question is also answered against the appellant.

22. view of the aforesaid answers to the questions of law, appeal is dismissed."

7. This precedent has been followed by this Tribunal in IBM Daksh Business Process Services (P) Ltd. and it is observed as:

"**8.** So far as the Call Centre Service (Business Auxiliary Service) provided to overseas clients is concerned, there is no dispute that this is taxable service under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994 and the same was fully exempt from service tax during the period of dispute in terms of exemption Notification No. 8/2003-S.T., The question as to whether the appellant would be eligible for Cenvat credit in respect of the input services used in providing this service which had been exported without payment of service tax and whether this credit could be utilized by them in terms of Rule 5 of the Cenvat Credit Rules, 2004 for payment of service tax on taxable service provided to their domestic clients or their inability to utilize this Cenvat credit for payment of service tax on domestic service transactions, whether its cash refund would be available in terms of this, stands answered in favour of the appellant by the judgement of the Tribunal in the case of *Zenta Pvt. Ltd.* reported in 2012-TIOL-624-CESTAT-MUM = 2012 (27) S.T.R. 519 (Tri.-Mumbai) = 2012 (284) E.L.T. 45 (Tri.-Mumbai), wherein the Tribunal has held that if the assessee is providing a taxable service, although exempt by way of notification, but which had been exported, the assessee would be entitled to take Cenvat input credit in terms of Rule 5 of the Cenvat Credit Rules, 2004. We find that same view has been taken by the Tribunal in the case of *M/s. Dell International Services India Pvt. Ltd.* reported in 2009-TIOL-1957-CESTAT-Bang. = 2010 (17) S.T.R. 540 (Tri.-Bang.), and also in the case of *M/s. mPortal (India) Wireless Solutions Pvt. Ltd.* reported in 2010-TIOL-1486-CESTAT-BANG. We also find that on the question of availability of input duty cenvat credit in respect of inputs used in or in relation to the manufacture of final products, exported under bond/LUT, which though excisable, are fully exempt from duty by some exemption notification, has been considered by the Hon'ble Bombay High Court in case of *Repro India Ltd. v. Union of India* reported in 2009 (235) E.L.T. 614 (Bom.) and also by the Hon'ble High Court of Himachal Pradesh in the case of *CCE*

v. *Drish Shoes Ltd*. reported in 2010 (254) E.L.T. 417 (HP) wherein the Hon'ble High Court has held that in such cases, input duty Cenvat credit would be admissible to the manufacturer/exporter in terms of Rule 5 of the Cenvat Credit Rules, 2004 and this credit can either be utilized by him for payment of duty on the goods cleared for home consumption and on his inability to utilize the Cenvat credit in this manner, the same would be refundable to him in cash in terms of this Rule, notwithstanding the fact that final products exported, in the manufacture of which the cenvated inputs had been used, were fully and unconditionally exempt from duty under some exemption notification. The ratio of these two judgments of Hon'ble High Courts is squarely applicable to the question of availability of Cenvat credit in respect of input services used in or in relation to providing of Call Centre Service' (Business Auxiliary Service) to offshore clients and which had been treated as export of service."

7. In view of the above, I do not find any discrepancy in the impugned order. Accordingly, the same is upheld and Revenue's appeal being devoid of merit is dismissed. Appeal dismissed.

(Dictated and pronounced in the open Court)

Sd/-

(Dr. D.M. Misra)
Member (Judicial)

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