

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12553 of 2018

(Arising out of OIA-AHM-EXCUS-002-APP-083-16-17 Dated- 16/02/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax- AHMEDABAD)

Rangdhara Polymers

BLOCK NO 10-12-14 NI. SAKAR HEALTHCARE PVT LTD
SARKHEJ-BAVLA HIGHWAY , CHANGODAR
AHMEDABAD-GUJARAT

.....Appellant

VERSUS

C.C.E. Ahmedabad-ii

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

.....Respondent

APPEARANCE:

Shri. Pradeep Jain, Chartered Accountant for the Appellant
Shri Vinod Lukose, Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 12297 /2021

DATE OF HEARING: 27.07.2021
DATE OF DECISION: 30.07.2021

RAMESH NAIR

The issue involved is that whether time limit prescribed under Section 11B shall apply for refund of Cenvat Credit under Rule 5 of Cenvat Credit Rules 2004 read with Notification No. 5/2006-CE (NT) dated 14.03.2006 in respect of refund for the period April 2008 to June 2008. Both the lower authorities have rejected the refund claim on the ground that as per the amended Notification 5/2006-CE(NT) application of provision of section 11B of Central Excise Act, 1944 was inserted accordingly, the refund claim was rejected on time bar.

2. Shri Pradeep Jain, Learned Counsel appearing on behalf of the appellant submits that since Section 11B does not have a specific provision regarding the relevant date in respect of the refund under Rule 5 of Cenvat Credit Rules, 2004, the time limit of one year for filing refund as prescribed under Section

11B shall not apply for the refund under Rule 5 of Cenvat Credit Rules 2002.

He placed reliance on the following judgements:

- mPortal India Wireless Solutions P. Ltd. 2012 (27) STR 134 (Kar.)
- CCE vs Swagat Synthetics 2008 (232) ELT 413 (Guj.)
- STI India Ltd. 2009 (236) ELT 248 (MP)
- CC Chennai vs Celebrity Designs India Pvt. Ltd. 2014 (304) ELT 422 (Tri. Chennai)
- Quality BPO Service Pvt. Ltd. 2015 (39) STR 230 (Tri. Ahmd.)
- Deepak Spinners Ltd. 2014 (302) ELT 132 (Tri. Del.)
- CC Jalandhar vs JCT Ltd. 2013 (296) ELT 426 (Tri. Del.)
- Kpit Cummins Infosystems Ltd. 2013 (32) STR 356 (Tri. Mum.)
- Elcomponics Sales Pvt. Ltd. 2012 (279) ELT 280 (Tri. Del.)
- CCE vs Hyundai Motors India Engineering 2011 (21) STR 667 (Tri. Bang.)
- Global Energy Food Industries 2010 (262) ELT 627 (Tri. Ahmd.)
- KLA Tencor Software India Pvt. Ltd. 2016 (45) STR 242 (Tri. Chennai)
- CCE Coimbatore vs GTN Engineering (I) Ltd. 2012 (281) ELT 185 (MAD)
- CCE vs Rangdhara Polymers 2011 (264) ELT 275 (Tri. Ahmd)
- Sanghi Textiles 2006 (206) ELT 854 (Tri. Bang.)
- Anjani Synthetics 2001 (132) ELT 688 (Tri. Mum.)
- Spectrumix Plastics 2014 (307) ELT 353 (Tri. Ahd.)

3. On the other hand, Shri Vinod Lukose, Learned (Superintendent) Authorized Representative appearing on behalf of the revenue reiterates the findings of the impugned order. He further submits that as per para 6 of Notification No. 5/2006-CE (NT) issued under Rule 5 of Cenvat Credit Rules 2004 there is a clear provision that the refund claim under Rule 5 should be

applied before expiry of the period specified in Section 11B of Central Excise Act, 1944. He submits that in the present case since the refund under Rule 5 is in respect of cenvat credit of inputs used in export goods, the relevant date is from the date of export. However, the appellant have filed the refund claim much after one year from the date of export, therefore, the refund was rightly rejected as time bar by the lower authority. He placed reliance on the following judgements:

- Suretax Prophylactics India P. Ltd. 2020 (373) ELT 481 (Kar.)
- CCE Coimbatore vs GTN Engineering (I) Ltd. 2012 (281) ELT 185 (MAD)
- 2019 (369) ELT 791 (Tri. Ahmd.) Petronet LNG Ltd.
- Shaily Engineering Plastics Ltd. A/10281/2020 dated 27.01.2020
- Emerson Innovation Center 2018 (8) GSTL 400 (Tri. Mum.)
- Shaily Engineering Plastics Ltd. A/12224/2017 dated 31.08.2017
- Spectamix Plastics vs CCE Vapi 2014 (307) ELT 353 (Tri. Ahmd)
- Banswara Syntex Ltd. Vs CCE Jaipur 2017 (345) ELT 547 (Tri. Del.)
- CCE vs Rangdhara Polymers 2011 (264) ELT 275 (Tri. Ahmd)
- Sanghi Textiles 2006 (206) ELT 854 (Tri. Bang.)
- Anjani Synthetics 2001 (132) ELT 688 (Tri. Mum.)
- CCE vs Celebrity Designs India P. Ltd. 2015 (321) ELT 221 (Mad.)
- Paul Mason Consulting India Pvt. Ltd. 2016 (335) ELT 153 (Tri. Ahmd)
- CCE vs Doaba Co-operative Sugar Mills 1988 (37) ELT 478 (SC)

4. I have carefully considered the submissions made by both the sides and perused the records. The limited issue involved in the present case is that whether the refund under Rule 5 of Cenvat Credit Rules 2004 shall be governed by Provision of Section 11B of the Central Excise Act, 1944. In this

regard, the relevant provision in Notification No. 5/2006-CE (NT) i.e. para 6 is reproduced below:

"6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

From the above para 6, it is clear that refund under Rule 5 must be filed before expiry of period specified in section 11B of the Central Excise Act, 1944, as there is specific mention. Learned Counsel submitted that there is no mention about the relevant date for the purpose of rule 5.

For ease of reference Section 11B is reproduced below:

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

- (1) Any person claiming refund of any duty of excise may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

[Explanation: for the purposes of this section:-

- (A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (B) "relevant date" means, -
- (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India,...."

From the above definition of 'relevant date', it can be seen that sub clause (a) of Clause (B) of definition of relevant date clearly covers the refund of duty paid in respect of the excisable material used in the manufacture of export goods. In the present case, the refund under Rule 5 is also in respect

of the duty paid on the material used in the manufacture of export goods. Therefore, it cannot be said that there is no mention about the relevant date in respect of refund of the nature in the present case. The identical issue has been considered under various judgements. In the case of Suretax Proplyplastics vs CCE (supra) the Hon'ble High Court has given the following observation:

“10. A plain reading of the above Rule would indicate that where any input for input service is used in the manufacture of final product which is cleared for export under Bond or letter of undertaking, the Cenvat credit in respect of the same, so used shall be allowed to be utilized by the manufacturer or provider of output service so used and shall allowed to be utilized by the manufacturer or provider of output service and if for any reason, such adjustment is not possible, the manufacturer or the provider of output service would be entitled to seek refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification. To put it differently, in terms of Rule 5 of CENVAT Credit Rules, 2004 when a manufacturer is exporting the final product continuously without payment of duty, the CENVAT Credit on inputs-input services would be accumulating to his CENVAT Credit records. Such manufacturer would be entitled to utilize the CENVAT Credit either for payment of excise duty on final products cleared for home consumption or for export on payment of duty or for payment of service tax on output service. If these contingencies are not forthcoming for any reason, then manufacturer/output service provider can seek refund as provided under Rule 5 read with relevant or extant notifications so issued.

11. The Central Government in exercise of the power conferred by Rule 5 of Cenvat Credit Rules, has from time to time issued several notifications and it would suffice the notifications which would be relevant for the purposes of the present appeals only being noted. They are :

- (i) Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006;
- (ii) Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012;
and
- (iii) Notification No. 14/2016-C.E. (N.T.), dated 1-3-2016.

The above referred three notifications would clearly indicate that same has been issued by the Central Government in exercise of the powers conferred under Rule 5 of CENVAT Credit Rules, 2004. Refund of unutilized Cenvat credit under Rule 5 is subject to the above notification and clause (6) of the notification dated 14-3-2006 which has bearing is extracted hereinbelow :

“The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994 in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).”

The above referred clause (6) also finds a place in the subsequent notification dated 18-6-2012 which would clearly indicate that the period specified in Section 11B of the Central Excise Act, 1944 would squarely be attracted in respect of the claims made for refund of Cenvat credit.

Notification dated 1-3-2016 is a notification issued amending the Notification No. 27/2012, dated 18-6-2012 whereunder paragraph 3 of clause (b) of notification dated 18-6-2012 came to be substituted as indicated hereinbelow :

“(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under :

(i) in case of manufacturer, before the expiry of the period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944);

(ii) in case of service provider, before the expiry of one year from the date of -

(a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

(b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.””

Similar view was taken by this Tribunal in the case of Spectramix Plastics vs CCE (supra). This Tribunal clearly made observation that refund claim in terms of Notification No. 5/2006-CE (NT) issued under Rule 5 of Cenvat Credit Rules, 2004 is subject to one year time bar as prescribed under Section 11B of Central Excise Act, 1944.

5. Even same observation was made by this Tribunal in the case of Emerson Innovation Center vs CCE Pune (supra), wherein it was held that in respect of refund under Rule 5 against export of goods Section 11B of Central Excise Act, 1944 is applicable and also held that refund of cenvat credit relatable to export beyond one year is time bar.

6. As regard the heavy reliance made by Learned Appellant in their own case wherein the Order No. A/196-197/WZB/AHD/2010 dated 25.01.2010 passed by This Tribunal, I find that this judgement was passed relying on the judgement of Sanghi Textiles reported in 2006 (206) ELT 854 and Anjani

Synthetic Ltd. 2001 (132) ELT 688 (Tri.). Learned Authorized Representative tried to distinguish this judgement on the ground that the judgements relied upon are on different footing. On careful reading of the judgement, I find that firstly, the Tribunal has not dealt with the definition of relevant date particularly given in sub clause (a) of Clause B of Section 11B which directly deals with the refund of present nature. Secondly, the judgements relied upon in case of Sanghi Textiles Ltd. And Anjani Synthetics (supra) are on refund of deemed credit whereas in the present case the fact is that refund is under Rule 5 in respect of regular cenvat credit availed on the input used in the export goods, therefore, the judgement in the appellant's case reported in 2011 (264) ELT 275 (Tri. Amd.) is clearly distinguishable, hence distinguished.

7. In view of my above discussion and findings, I am of the view that the refund of the appellant is correctly rejected on time bar as the same was not filed within the stipulated period of one year. Accordingly, the impugned order is upheld. Appeal is dismissed.

(Pronounced in the open court on 30.07.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)