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

Appeal No. E/12256/2018-SM

[Arising out of OIA-CCESA-SRT-APPEAL-PS-098-2018-19 dated 25/06/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s. Zydys Healthcare Ltd Appellant

Vs

C.C.E & S.T –Danan Respondent

Represented by:
For Appellant: Mr. Willingdon Christian (Advocate)
For Respondent: Mr. A. Mishra (A.R.)

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

Date of Hearing/Decision:13/12/2018

Final Order No. A/ 12943 /2018

Per: Ramesh Nair

The issue involved is that whether the Cenvat Credit can be denied to the manufacturer Exporter who could not realize Foreign Exchange due to the rejection of the export goods, when the goods have been physically exported outside India.

2. Shri. Willingdon Christian, Ld. Counsel appearing on behalf of the appellant submits that the Cenvat Credit is admissible in respect of export of goods in terms of Rule 6(6) of Cenvat Credit Rule, 2004. He submits that there is no condition that in case of export the Foreign Exchange limit should be received in order to allow the Cenvat Credit. Therefore, when the export of goods is not under dispute the Cenvat Credit is admissible. He placed reliance on the following judgments:-

- P&P Overseas Vs. CCE,Delhi- 2017 (49) STR 611(Tri. Del.)

- Varun Industries Vs. CCE & S.T.,Rajkot-2017 (49) STR 613(Tri. Ahmd.)
- Shyam Telecom Ltd. Vs. CCE., Delhi-III- 2015 (317) ELT 619 (Tri. Del.)Reliance Industries Ltd. Vs. CC(Prev.), Jamnagar- 2015 (317)ELT 621(Tri. Ahmd.)

3. Shri. Amit Kumar Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the records, I find that the lower authorities have denied the Cenvat Credit only on the ground that against the export of goods, the Foreign Exchange remittance was not received by the appellant. It is observed that the goods have been admittedly exported out of India. After receipt of the goods by the foreign buyer, goods were found rejected then same was remained in that Country. Due to the rejection the payment towards such export could not be made. The relevant Rule 6(6) of Cenvat Credit Rules,2004 is reproduced below:-

> *"(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-*
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> *I. cleared to a unit in a special economic zone; or to a developer of a special economic zone for their authorized operations ; or*
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> *II. cleared to a hundred per cent. export-oriented undertaking; or*
>
> *III. cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or*
>
> *IV. supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or*
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> *V. cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or*
>
> *VI. gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or.*
>
> *VII. all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when*

imported into India and are supplied,-

a) against International Competitive Bidding; or

b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

c) to a power project awarded to a developer through tariff based competitive bidding

In terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006"

5. As per plain reading of the above Rule the Cenvat Credit is allowed in respect of the goods cleared without payment of duty for export. As per Section 2(80) of the Customs Act, export means "export ", which is grammatical variation and congrant means taking out of India to a place out of India" and as per sub Rule 19 the definition of the export goods is "export goods means any goods which are to be taken out of India to place outside of India. As per the facts of the present case the goods have been taken out of India to a place outside of India". Therefore, the supply of the goods by the appellant clearly qualifies as 'export of goods'. Once the export of goods is not under dispute, in terms of Rule 6(6) of Cenvat Credit Rules, 2004, the appellant is entitled for the Cenvat credit. Moreover in the Cenvat Credit Rules, 2004 in respect of export goods there is no condition stipulated that against the export, the Foreign Exchange remittance should be received in order to allow the Cenvat Credit. The issue has been considered by this Tribunal in the case of P&P Overseas (Supra) wherein the Tribunal has passed the following order:

"5.I have considered the submissions from both the sides and perused the records.

6.There is no dispute that the refund amount under Rule 5 of the Cenvat Credit Rules, 2004 which have been disallowed is in respect of the Cenvat credit availed in respect of CHA service availed for export of the goods and courier service availed in connection with manufacturing business of the appellant company. The department has denied the refund claims on the ground that the Cenvat credit in respect of these two services is not admissible. However, this issue stands decided in appellant's favour in the appellant's own case by the Commissioner (Appeals) vide order-in-appeal dated 2-1-2012. In view of this, the first ground on which the refund claims have been denied would no longer be valid.

7.As regards the other ground for denial of the refund claims that the sale proceeds in respect of goods exported have not been received, it is seen that this condition is neither there in Rule 5 of the Cenvat Credit Rules nor this condition has been prescribed in the Notification No. 5/2006-C.E. (N.T.) issued under Rule 5 of the Cenvat Credit Rules. In view of this, the denial of refund claim on the ground that the export proceeds have not been received is not sustainable.

8.In view of the above, the impugned order is not sustainable. The same is set aside. The appeals are allowed."

6. The similar issue has been considered in the case of Shyam Telecom Ltd wherein the following order was passed:-

"6. Rule 19 of the Central Excise Rules, 2002, permits export of the goods under bond/LUT without payment of duty, subject to following the procedure and conditions, as may be prescribed by the notification issued by the Government in this regard. Notification No. 42/2001-C.E. (N.T.), dated 26-6-2001 issued under Rule 19(3) prescribes the conditions and the procedure for this purpose and in this notification, there is no condition that in respect of the goods exported, the export proceeds must be received within any stipulated period. There is no such condition even in the Rule. In view of this, the condition regarding receipt of export proceeds cannot be imposed to demand duty foregone in respect of the goods cleared for export under bond/LUT. The duty on the goods can be demanded only if the goods have not been exported out of India within the stipulated period but there is no such allegation. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed."

7. In view of the above decision on the identical issue coupled with my discussion made hereinabove, the appellant are clearly entitled for the Cenvat Credit in respect of inputs contained in export goods. Accordingly the impugned order is set aside, appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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