IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/52763/2015-EX[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/002/APP/001/15-16 dated 15/04/2015 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Noida)

Commissioner of Central Excise, Commissioner, Noida-II **Appellant**

Vs.

M/s Burda Druck India Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (AC) AR for Appellant
M/s Stuti Saggi (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	20/12/2017
Date of Decision	:	20/12/2017

FINAL ORDER NO. 70731/2018

Per: Anil Choudhary

The issue in this appeal by Revenue is whether the appellant have rightly taken Cenvat Credit on input service and whether they are entitled to refund under Rule 5 of CCR read with Notification No. 27/2012.

2. Brief facts are that the appellant is engaged in manufacture of multi colour printed book, journals, catalogue etc., under Chapter Heading 4901, 4902, 4911 and 4707 and are exporting the same outside India apart from domestic

sale. They have filed a refund claim of Rs. 18,44,633/- under Rule 5 of CCR, 2004 for the period of April 2013 to June 2013 in the prescribed form claiming refund for Cenvat Credit duty paid on input services used in the manufacture of excisable goods exported during the quarter April 2013 to June 2013. It was noticed that their domestic sale of excisable product cleared at NIL rate of duty during the quarter was Rs. 13,40,48,729/-. Export turnover of services and value of all other services provided during the quarter was Rs. 5,05,036/-. The total turnover during the quarter was 19,81,30,983/-. It appeared to Revenue that the respondent assessee was also providing certain taxable services, but said services are not being exported and volume of such service during the period under reference is to the tune of Rs. 5,05,036/- only (under BSS service as per the ST-3 returns) which is very miniscule in comparison to the total turnover. Thus, it appeared that the respondent was manufacturing and clearing almost all exempted products for either domestic sale or export. Hence, they were not entitled to avail Cenvat Credit of duty paid on inputs or input service used in manufacture of such exempted products which attract NIL rate of duty and are either sold in Domestic Tariff area or exported, in terms of Rule 6(1) of CCR, 2004. Accordingly SCN dated 9 September, 2014 was issued as to why the refund claimed on Cenvat Credit should not be rejected as it appears the Cenvat Credit availed by them was inadmissible to them.

3. The SCN was adjudicated vide O-I-O dated 19 September, 2014 and the refund was rejected. Being aggrieved respondent preferred appeal before learned Commissioner (Appeals) who vide the impugned Order-in-Appeal have observed that the Adjudicating Authority have not disputed the event of export of goods against bond, exports were supervised by the Jurisdictional Central Excise Authority. As is evident from the copy of the bond register enclosed with the appeal. It was further observed that the Para 1.1 of Part III Chapter 7 of CBEC Manual of supplementary instructions, is in respect of the units which are exempted on the basis of value of clearance and are not registered with the Central Excise Department, hence such units need not export under bond or against the LUT. The respondent-assessee as is apparent, from the copies of Annexure C-1, enclosed, as well as the impugned order, were registered with the Central Excise as manufacturer and were exporting the goods under the supervision of Jurisdictional Central Excise Officers. They have also been clearing goods under bond and have filed proper ER-1s and ST-3 returns, hence they are not covered by the Para 1.1 of Part III of Chapter 7 of CBEC Manual of supplementary instructions. Therefore, the exports effected by them under bond are legal and benefit accruing to them for such export cannot be denied, just because the goods exported are exempted or chargeable to 'NIL' rate of duty. Rule 6(6) of the CCR, over

rides the provision to Rule 6(1) to Rule 6(4) of CCR by virtue of the provisions contained in it. Further took notice of Clause (V) of Rule 6(6) of CCR, 2004 provides that the provisions of sub Rule (1), (2), (3) and (4) of Rule 6 shall not be applicable in case the excisable goods cleared without payment of duty are cleared for export under bond, in terms of the provisions of Central Excise Rules. Based on such findings and further relying on the ruling of this Tribunal in the case of CCE vs. Motherson Sumi Electric Wires reported at 2010 (252) ELT 543 (Tri. Bang.), the appeal was allowed in favour of the respondent assessee with consequential benefits.

4. Being aggrieved by the said order Revenue is in appeal on the grounds which are more or less repetition of the averments in the show cause notice. Learned AR for the Revenue supported the grounds of appeal as contained in the appeal memo.

5. Having considered the rival contentions I find that there is no specific mistake pointed out in the findings of the learned Commissioner (Appeals). I hold that the learned Commissioner (Appeals) have rightly held that the provisions of Rule 6(6) of CCR, 2004 overruled the provisions of and/or have an overriding effect over sub Rule (1), (2), (3) and (4) of Rule 6 of CCR., 2004. Further it is admitted fact that the respondent had cleared the goods from their works/factory under the bond for export and there is no dispute regarding

the factum of export. Accordingly there is no impropriety in the impugned order, therefore, I uphold the same. The appeal filed by Revenue is dismissed.

(Dictated and pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ankit