

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

APPEAL No. E/71140/2018-EX[SM]

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/141/2018-19 dated 06/06/2018 passed by Commissioner, Central Goods & Service Tax (Appeals), Meerut)

Commissioner, Central Goods & Service Tax, Ghaziabad Appellant

Vs.

M/s Swadeshi Polytex Ltd.

Respondent

Appearance:

Shri Sandeep Kumar Singh (Deputy Commissioner) AR for Appellant
Shri Kapil Vaish (CA) for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 31/12/2018
Date of Decision : 31/12/2018

FINAL ORDER NO 72947 / 2018

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Learned AR Shri Sandeep Kumar Singh, Deputy Commissioner on behalf of the Revenue and Learned Chartered Accountant Shri Kapil Vaish on behalf of the Respondent I note that in the present case application for refund of un-utilized Cenvat Credit lying balance on closer of factory was filed by the appellant. The claim was for around Rs.21 lakhs. The Original Authority rejected the refund.

Learned Commissioner (Appeals) has relied on decision of this Tribunal in the case of Commissioner of Central Excise and Service Tax, Lucknow vs. Jai Ganpati Metals reported at 2015 (322) E.L.T. 730 (Tri. Del.), and allowed the refund to the respondent. Aggrieved by the said order Revenue is before this Tribunal.

2. I note that learned AR for Revenue is relying on Larger Bench Decision in the case of Steel Strips vs. Commissioner of Central Excise, Ludhiana reported at 2011 (269) E.L.T. 257 (Tri.-LB) wherein this Tribunal has held that there is no provision under Rule 5 of Cenvat Credit Rules, 2004 to allow the refund of un-utilized Cenvat lying in Cenvat Account on closer of the factory. He has also submitted that Rule 5 of Cenvat Credit Rules does not allow refund of Cenvat Credit of Central Excise duty paid on capital goods.

3. On the contrary the learned Chartered Accountant for respondent has submitted that this Tribunal subsequent to the passing of Larger Bench's decision has held in the case of Commissioner of Central Excise vs. Jai Ganpati Metals (supra) that the decision by Hon'ble Karnataka High Court in the case of Slovak India Trading Co. Pvt. Ltd. reported at 2006 (201) E.L.T. 559 (Kar.) shall prevail over the decision of Larger Bench. He has further submitted that Hon'ble Karnataka High Court has ruled in the said case that under said circumstances Rule 5 of Cenvat Credit Rule was not

applicable. Therefore, the question of refund of Cenvat Credit on account of capital goods does not arise. Learned Chartered Accountant, representing the respondent is also relying on Larger Bench's decision of this Tribunal in the case of Gauri Plasticulture (P) Ltd. vs. Commissioner of Central Excise, Indore reported at 2006 (202) E.L.T. 199 (Tri. -LB). It was held in the said case of Gauri Plasticulture (supra) that whenever assessee was unable to utilize the credit on account of objection raised by the Department and paid duty in cash, they would be entitled to refund of credit in cash on the dispute being ultimately settled in favour of assessee. The learned Chartered Accountant on behalf of the respondent has submitted that relying on the said ruling of Hon'ble High Court of Karnataka this Tribunal allowed refund of unutilized Cenvat Credit of Rs.34,44,899/- on closer of manufacturing unit in the case of Commissioner of Central Excise and Service Tax, Noida vs. M/s Molex India Pvt. Ltd. through Final Order No.A/70142/2017-SM(BR) as reported at 2017 (3) TMI 294 – CESTAT Allahabad and further submitted that as stated by Revenue before Hon'ble Allahabad High Court in the case of M/s Modipon Ltd. in Central Appeal No.185 of 2015 that said Final Order passed by this Tribunal was accepted by Department on 20.08.2017 on merit and the Hon'ble Allahabad High Court has allowed appeal filed by M/s Modipon Ltd. in the same terms as in the case of Molex

India Pvt. Ltd. (supra) through its order and judgment dated 08.10.2018.

4. I, therefore, find that allowing refund of un-utilized Cenvat Credit on closer of manufacturing unit as held by this Tribunal has been affirmed by Hon'ble High Court of Allahabad.

5. I, therefore, do not find any merit in the appeal filed by Revenue. Therefore appeal filed by Revenue is rejected.

(Dictated and Pronounced in Court)

Sd/-
(Anil G. Shakkwar)
Member (Technical)

Ankit