FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 20/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **A/71449-71450/2017-SM[BR]** dated **13/10/2017**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1971/2010	CCE, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
2	E/1979/2010	CCE, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
		Name and Address of Respondent
3		TEVA API INDIA LIMITED A-2, Industrial Area, Gajraula, Distt-J P Nagar(UP),,
4		TEVA API INDIA LIMITED, A-2, INDUSTRIAL AREA, GAJRAULA, DISTT. J.P.NAGAR (U.P.),,

Other Appellants and Respondents as per Annexure

Copy To

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Second Folder Copy 18 Guard File

Asstt. Registrar

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

APPEAL No: E/1971 & 1979/2010-EX[SM]

(Arising out of Order-in-Appeal No. 12-13-CUS/MRT-II/2010 dated 29/03/2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

Commissioner of Central Excise, Meerut-II **Appellant(s)**

Vs.

M/s TEVA API INDIA LTD. **Respondent(s)**

Appearance:

Shri Sandeep Kumar Singh, AR for Appellant
Shri Absent on call for Respondent

CORAM:

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

Date of Hearing : 13/10/2017
Date of Decision : 13/10/2017

FINAL ORDER NO: 71449-71450/2017

Per: Anil Choudhary

The issue in these appeals is whether the Commissioner (Appeals) have rightly set aside the impugned Order-in-Original and remanded the matter back with the direction to consider the matter afresh on the basis of all the documents/information, by giving opportunity of hearing.

2. The brief facts are that the appellant(s) are registered with the Central Excise Department as 100% EOU and are engaged in the manufacture and export of Bulk Medicines falling under Sub-heading No. 2941.9090 & 2942.0090 of the

First Schedule to the Central Excise Tariff Act, 1985. They are availing the benefit of Cenvat credit of duty paid on inputs procured indigenously as well as the credit of Service Tax paid on input services received by them.

3. The appellants filed two refund applications dated 30/06/2008 & 30/09/2008 under Rule 5 of the Cenvat Credit Rules, 2004, read with Notification No. 5/2006-CE(NT), dated 14/03/2006 on account of unutilized input credit, used in the manufacture of exported goods for the month of May, 2008 and August, 2008 respectively. The refund claim dated 30/06/2008 was filed against the services availed during the period November, 2006 to September, 2007 whereas claim dated 30/09/2008 covers the period February, 2007 to June, 2008.

4. As the appellants did not reply to the queries raised by the Superintendent, notice to show cause dated 31/03/2009 & dated 23/06/2009 were issued to the appellants for proposing rejection of refund claims on the grounds mentioned in the notices to show cause. The Adjudicating Authority vide impugned orders rejected the refund claims filed by the appellants on the detailed grounds given in the orders.

5. The respondents - assessees filed appeals before the Commissioner (Appeals) on the ground that the appellants were not in a position to utilize the Cenvat credit which they had rightly taken as they are 100% EOU. Further, Rule 5

provides that if utilization of credit is not possible then an assessee can apply for refund. That is no provision to establish one-to-one co-relation between the input service and the final product exported for the particular month or quarter. Further condition No. 4 given in the form of the connection to the Notification clearly states that refund will be allowed on making of a declaration that the assessee is not in a position to utilize input Service Tax credit for payment of duty in respect of final products cleared for home consumption or for export. Therefore, the observation in the Order-in-Original that condition No. 4 allows refund of unutilized Cenvat credit only with respect to services used in the manufacture of goods during the given period, as the case may be, is contrary and against the Notification itself. Further, relied on the ruling in the case of Capiq Engineering Pvt. Ltd. Vs CCE reported in 2009 (90) R.L.T. 555 wherein it is held that refund under Rule 5 of CCR, 2004 is available on unutilized credit lying in the quarter though the services have not been utilized in that quarter, as one-to-one co-relation between input services and exported final product is not required.

6. The Learned Commissioner (Appeals) taking notice of CBEC Board's Circular No. 120/01/2010-ST dated 19/01/2010 relied upon by the assessee wherein at Para-3.3, it is categorically clarified that irrespective of when the credit was taken, the refund should be granted if otherwise in order.

It was further noticed that Para-4 of the said Circular directs the field formations that the instructions contained therein should be implemented immediately and pending claims may be disposed of accordingly. It was further observed that the refund claim of the respondent assessee was not examined on merits in view of the Board Circular and accordingly, the matter was remanded back for proper consideration.

7. The respondent is absent on call.

8. Heard the Learned A.R. and perused the records.

9. Having considered the rival contentions, I find no error in the finding of the Learned Commissioner (Appeals) wherein he have directed the Adjudicating Authority to reconsider the refund claim in accordance with law, more particularly in view of Board Circular which have been issued subsequent to the passing of the Order-in-Original. Accordingly, these appeals filed by Revenue are dismissed. The Adjudicating Authority is further directed to pass a reasoned order in accordance with law, if not passed so far, within a period of 60 days from the date of receipt of a copy of this order, as directed by Learned Commissioner (Appeals).

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
06/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001