CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 27 of 2010

[Arising out of Order-in-Appeal No. 489/2009 dated 26/11/2009 passed by the Commissioner of Central Excise (Appeals) Mangalore]

Commissioner of Central Excise, Belgaum — **Appellant**
No. 71, Club Road
Belgaum – 590 001

VERSUS

Doddanavar Brothers — **Respondent**
EOU Division
Doddannavar Compound
Near Fort
Belgaum – 590 016

With

Service Tax Appeal No. 2531 of 2010

[Arising out of Order-in-Appeal No. 489/2009 dated 26/11/2009 passed by the Commissioner of Central Excise (Appeals) Mangalore]

Commissioner of Central Excise, Belgaum — **Appellant**
No. 71, Club Road
Belgaum – 590 001

VERSUS

Doddannavar Brothers — **Respondent**
(EOU Division)
Hiremagi-Ramthal Post,
Amingad Taluk
Hungund Dist., Bagalkot

APPEARANCE:

Mr. Dyamappa Airani, AR
Mr. Ashok A. Deshpande, Advocate for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20702 - 20703 /2023

Date of Hearing: 06/07/2023
Date of Decision: 06/07/2023

Per: D.M. Misra

These two appeals are filed by the Revenue against common Order-in-Appeal No. 489/2009 passed by the Commissioner of Central Excise (Appeals) Mangalore.

2. Briefly stated, the facts of the case are that the appellants are a 100% EOU availed cenvat credit on the inputs received and used in their factory for manufacture of iron ore. They filed refund claim under Rule 5 of the Cenvat Credit Rules, 2004 for the period April 2008 to September 2008 amounting to Rs. 54,96,383/- (Rupees Fifty Four Lakhs Ninety Six Thousand Three Hundred and Eighty Three only) and also for another period on the ground that the accumulated cenvat credit cannot be used for DTA clearances. On adjudication, the Assistant Commissioner rejected the refund claim on the ground that the credit availed on input services, namely, outward freight from the place of factory to the place of export i.e. port is not admissible as the place of removal is only the factory gate not the port of export. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals) who partly allowed the refunds and partly rejected the same on limitation.

Hence, the present appeals by the Revenue challenging the order of the learned Commissioner (Appeals), relating to allowing the refund of accumulated cenvat credit on outward freight up to the place of port.

3. At the outset, the learned AR for the Revenue reiterated the grounds of the appeal. He submits that the place of removal before and after the amendment of the definition of 'input service' in relation to outward freight cannot be considered, as the place of export. Therefore, the Commissioner (Appeals) finally allowing refund under Rule 5 of Cenvat Credit Rules, 2004 on the said issue is bad in law and therefore be set aside.

4. Learned Advocate Shri Ashok Deshpande for the respondent has submitted that the issue relating to admissibility of cenvat credit on input services namely outward freight from the factory gate to the port has been settled by the Honb'le High Court of Himachal Pradesh in the case of ***Commissioner of Central Excise Vs. Drish Shoes Ltd. – 2010 (254) E.L.T. 417 (H.P.)*** which later upheld by the Hon'ble Supreme Court reported at ***2018 (360) E.L.T. A191 (S.C).*** He has submitted that further the Board vide its Circular No. 999/6/2015-CX dated 28/02/2015 categorically at para 4 & 5 clarified that the place of removal in case of export of the goods where the manufacturer-exporter is involved, be considered as port of export only. Further he has referred to the judgment of Hon'ble Gujarat in the case of ***Commissioner of Central Excise Vs.***

ADF Foods Ltd. – 2021 (45) G.S.T.L. 265 (Guj.) expressing the same view.

5. Heard both sides and perused the records. We find that the issue of admissibility of cenvat credit on outward freight from the place of manufacture to the place of export i.e. port by a manufacturer-exporter is no more res integra covered by the judgment of the Hon'ble Himachal Pradesh High Court. Also the Board accepted the principles of law settled by the Courts and Tribunal in various cases circulated in the Circular dated 28/02/2015, which in paras 4, 5 & 6 held as under:

> *"4. In most of the cases, therefore, it would appear that handing over the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to cenvat credit on related input services has to determined.*
>
> *5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant-exporter.*
>
> *6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the*

foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bills filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to cenvat credit shall be determined accordingly."

6. In view of the above position of law, we do not find merit in the appeals filed by the Revenue. Consequently, the appeals are dismissed.

(Dictated and pronounced in open court)

(D.M MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

iss...