CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 456 of 2011

(Arising out of Order-in-Appeal No.157/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
CR Building
Queens Road
Bangalore.

Appellant(s)

Versus

M/s. Jeans Knit (P) Ltd.
No.21-E1, 2nd Phase
Peenya Industrial Area
Bangalore – 560 058.

Respondent(s)

WITH

1. Customs Appeal No.457 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.157/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

2. Customs Appeal No.458 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.157/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

3. Customs Appeal No.459 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.157/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

4. Customs Appeal No.687 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.156/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

5. Customs Appeal No.689 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.156/2010 dated 28.08.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

6. Customs Appeal No.1146 of 2011 (Commissioner of Customs, Bangalore vs. M/s. Jeans Knit (P) Ltd.)

   (Arising out of Order-in-Appeal No.220/2010 dated 11.02.2011 passed by the Commissioner of Customs (Appeals), Bangalore.)

Appearance:

Mr. Neeraj Kumar, Superintendent (AR)	For the Appellant
Mr. N. Anand, Advocate	For the Respondent

CORAM:

HON'BLE P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20910 - 20916 / 2023

Date of Hearing: 24/07/2023

Date of Decision: 05/09/2023

Per : R. BHAGYA DEVI

These appeals are filed by Revenue against allowing refund claims of unutilised CENVAT credit where Service Tax was paid on various input services. The Commissioner (A) held that the original authority found that the goods are used in or in relation to the manufacture of finished goods and based on the earlier Orders-in-Appeals No.43/2009 dated 30.04.2009; No.48/2009 dated 19.5.2009 and No.70/2009 dated 20.07.2009, decided in favour of the respondent. Accordingly, the Commissioner (A) vide Order-in-Appeal No. 156/2010 and No.157/2010 both dated 28.8.2010 dismissed the appeals filed by the Revenue in respect to Customs Appeal No.456 to 459, 1146/2011. In respect of Customs Appeal Nos.687, 689/2011, respondent was in appeal before the Commissioner (A) and vide Impugned Order-in-Appeal No.220/2010 dated 11.2.2011 allowed the refund. Hence, in these present appeals, the Revenue is aggrieved by these orders of the Commissioner (A) and filed appeals only on the ground that various input services on which credit has been allowed and refund has been sanctioned, is not legal and proper because input services were not used in or in relation to the manufacture.

2. On the other hand, the respondent has submitted that they are eligible to take cenvat credit on the input services and they were rightly eligible for the refund claims under Rule 5 of the Cenvat Credit Rules, 2004. It is also submitted that in their own case for earlier periods where the refunds were rejected, this Tribunal had held in favour of the respondent in the case of **Jeans Knit Pvt Ltd vs. CC, Bangalore: 2011 (21) STR 460 (Tri.-Bang.)** and also wherein Revenue was in appeal before the Tribunal in respondent’s own case, the Tribunal dismissed the appeals filed by the Revenue vide Final Order No.20953-20960/2017 dated 23.06.2017 and Final Order No.20859-20863/2023 dated 23.06.2023. The present appeals are only periodical refund claims filed under Rule 5 of CENVAT Credit Rules, 2004 for a later period. It is submitted that the issue is no

longer *res integra* in as much as in their own case, the appeals were allowed. It is also submitted that vide Notification No.5/2006-CE (NT) dated 14.03.2006, the words "used in" was replaced with the words "used in or in relation to" thus enlarging the scope for availing credit. They also placed reliance on the judgment of the Hon'ble High Court of Karnataka in the case of **CCE, Bangalore vs. Stanzen Toyotetsu (India) Pvt. Ltd; 2011 (23) STR 444 (Kar.)**.

3. The limited issue to be decided in this appeal is as to whether the respondent is eligible for refund of accumulated CENVAT credit on input services which according to the Revenue are not related to manufacture of goods exported. It is seen that various input services are used in the manufacture of export goods and there is no evidence on part of the Revenue to prove that they are not used in the manufacture of export goods except for the fact that the input services did not find a place in the inclusive definition of 'input service' under Rule 2 of Cenvat Credit Rules, 2004. It is also an admitted fact that for the earlier periods in the appellants own case where the Revenue had filed appeal before the Tribunal, the issue was decided in favour of the respondent. In view of the above, the question of denying the refund of accumulated credit does not arise.

4. We do not find any reason to set aside the impugned orders. This Tribunal in respondent's own case on similar set of facts had rejected the Revenue's appeals vide Final Order No.

20859 to 20863/2023 dated 23.06.2023. Following the ratio of the above decision, appeals are rejected and the impugned orders are upheld.

*(Order pronounced in Open Court on **05/09/2023.**)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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