CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20787 of 2014

(Arising out of Order-in-Appeal No. 659/2013-C.E. dated 29.11.2013 passed by the Commissioner of Central Excise (Appeals – I), Bangalore.)

M/s. Strides Arcolab Ltd.
No. 36/7, KRS Garden,
Surajagakkanahalli,
Indlawadi Cross, Anekal Taluk,
Bangalore – 562 106. **........Appellant(s)**

VERSUS

The Commissioner of Central Excise,
Bangalore I Commissionerate,
C R Building,
Bangalore – 560 001. **......Respondent(s)**

WITH

Central Excise Appeal No. 22397 of 2014

(Arising out of Order-in-Appeal No. 201/2014-C.E. dated 28.03.2014 passed by the Commissioner of Central Excise (Appeals – I), Bangalore.)

M/s. Strides Arcolab Ltd.
No. 36/7, KRS Garden,
Surajagakkanahalli,
Indlawadi Cross, Anekal Taluk,
Bangalore – 562 106. **........Appellant(s)**

VERSUS

The Commissioner of Central Excise,
Bangalore I Commissionerate,
C R Building,
Bangalore – 560 001. **......Respondent(s)**

Appearance:

Mr. Mehul Mor, Advocate for the Appellant
Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos.21779-21780/2024

Date of Hearing: 19.12.2024
Date of Decision: 19.12.2024

Per: P.A. Augustian

The issue in the present appeal is regarding refund under Rule 5 of Cenvat Credit Rules, 2004. Appeal No. 22397/2014 pertains to period from 01.07.2012 to 30.09.2012 and Appeal No. 20787/2014 is for the period from July 2010 to September 2010.

2. The brief facts are Appellant is a 100% EOU manufacturing pharmaceutical products and formulations. The appellant filed separate refund claims for refund of unutilized cenvat credit, under Rule 5 of Cenvat Credit Rules, 2004. Adjudication Authority partially allowed the refund claims. Aggrieved by said orders, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned Orders-in-Appeal also partially allowed the appeals. Aggrieved by said orders, these Appeals are filed.

3. When the Appeals came up for hearing, Learned Counsel submits that in Appeal No. E/22397/2014, the first appellate authority rejected the refund of Rs. 61,24,215/- and out of the said amount an amount of Rs. 6,97,008/- was rejected due to non-submission of documents. Further, in Appeal No. E/20787/2014, the first appellate authority rejected an amount of Rs. 1,09,547/- due to non-submission of documents. However, no opportunity was extended to appellant to cure the defect and unilaterally rejected the refund claims on the ground that appellant has not produced the documents and such method of rejection of refund claim is unsustainable.

4. Learned Counsel further submits that in Appeal No. E/22397/2014 refund of Rs. 1,25,263/- and in Appeal No. E/20787/2014 an amount of Rs. 78,07,800/- were rejected on the ground that there is no nexus between input and output services. Learned counsel produced detailed chart showing the activity and the co relation between the category of services and that each of the issue is covered by various decisions of

the Tribunal. Learned Counsel further submits that issue regarding co-relation of raw material and final products was considered by the Hon'ble Supreme Court in the matter of **CCE Vs. Dai Ichi Karkaria Ltd. reported in 1999 (112) ELT 353 (SC)** and held that "it is not as if credit can be taken only on a final product that is manufacture out of the particular raw material to which the credit is related. Therefore, a nexus between input and output services is not required to avail the Cenvat credit."

5. As regards denial of the refund on the ground that appellant had cleared the goods to third party exporter, Learned Counsel submits that issue was considered by the Hon'ble High Court of Gujarat in the matter of **CCE Vs. Shilpa Copper wire Industries – 2011 (269) ELT 17 (Guj.)** and held that "refund of unutilized Cenvat credit in case of deemed exports clearance made by 100% EOU to another EOU should be treated as physical exports and such turnover should be included for export turnover under Rule 5 of Cenvat Credit Rules, 2004. Learned Counsel also relied on the decision of this Tribunal in the matter of **Apotex Pharmachem India pvt ltd. Vs. CCE, Bangalore-I -2017 (50) STR26 (Tri.-Bang.).** Learned Counsel further submits that Cenvat credit Rules does not define what is export. Therefore, as aforesaid, even deemed export should also be considered as export for the purpose of Rule 5 considering the fact that said provision is a beneficial provision. Thus, refund of accumulated credit is eligible in terms of Rule 5 of Cenvat Credit Rules, 2004. Appellant also draws our attention to the declaration produced by appellant from M/s. Sandoz Pvt., Ltd., stating that export benefits for clearances made by the appellant via M/s Sandoz Pvt., Ltd., to United Nations Organization were not claimed by M/s Sandoz Pvt., Ltd.

6. Learned Authorised Representative(AR) for the Revenue reiterated the findings in the impugned order and submits that Commissioner (Appeals) has not sanctioned the refund on certain inputs mainly on the ground that supporting documents were not available for many of the cases, in some cases like transportation of employees, same was disallowed on the basis that it was not used for ferrying

employees between houses and factory and staff welfare is not related to business of manufacture of the product.

7. In rejoinder, Learned Counsel submits that as regards transportation of employees, Cenvat credit on service tax on transportation service provided in the factory of the appellant to their staff for pickup and drop from the residences to the factory and vice versa is an input services and covered by the decision of the Judgment of the Hon'ble High Court of Karnataka in the matter of **CCE Vs. Tata Auto Comp Systems Ltd – 2012 (277) ELT 315 (kar.)** and amount involved was Rs. 37,101/-.

8. Heard both sides and perused the records.

9. As regarding the first issue of rejecting the claim on the ground of lack of sufficient documents, we find that if an opportunity is extended, appellant could have produced the documents to the satisfaction of adjudication authority. Accordingly, as regards refund of Rs. 1,09,547/- in Appeal No. E/20787/2014 and Rs. 6,97,008/- in Appeal No. E/22397/2014 rejected on the ground of non-submission of documents is set aside and remanded for reconsideration by the adjudication authority. Similarly as regards the claim against the export made to third party, the appellant shall produce the declaration which is produced before this Tribunal, before the adjudication authority for verification whether M/s Sandoz Pvt., Ltd., who had undertaken the export on behalf of the appellant has claimed any export benefits and if they have not claimed any benefit as stated by them in the declaration, appellant is eligible for the refund of the said amount.

10. As regarding denial on the ground that there is no nexus between input and output services, we find that the issue is squarely covered by the judgment of the Hon'ble High Court in the matter of **CCE Vs. Ultratech Cements, 2010 TIOL 745 (HC Mumbai),** where it is held that:-

> "28................ *the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes*

various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service not restricted to services used in or in relation to manufacture of final products, but services used in relation to the business of manufacturing the final product, but extends to all services used in relation to the business of manufacturing the final product."

11. Accordingly, as regards rejection of refund claim on the ground that that there is no nexus between input and output services, following the ratio of the judgment of the Hon'ble High Court in the matter of **CCE Vs. Ultratech Cements, (supra)** is set aside with consequential relief, if any, as per law. As regards refund of Rs. 1,09,547/- in Appeal No. E/20787/2014 and Rs. 6,97,008/- in Appeal No. E/22397/2014 which rejected due to non-submission of documents is set aside and remanded for reconsideration of the supporting documents by the adjudication authority. Similarly, as regards the claim against the export made through third party, adjudication authority is directed to verify the declaration made by M/s Sandoz Pvt. Ltd and if they have not claimed any benefit, appellant is eligible for the refund of the said amount.

12. Considering the above, appeals are partially allowed by way of remand on the above terms.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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