CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/21593 to 21595/2017-SM

[Arising out of Order-in-Appeal No. 219-221/2017-CT dt. 13/09/2017 passed by Commissioner of Central Tax (Appeals-II), Bangalore]

Infinite Resources
No.16, 1oth A Cross,
Thigalarapalya Main Road,
Peenya 2nd stage,
Bangalore-560058.

Appellant(s)

Versus

Commissioner of Central Tax
Bangalore

Respondent(s)

Appearance:

Shri B.N. Gururaj, Advocate — For the Appellant

Dr. J. Harish, Dy. Commissioner(AR) — For the Respondent

Date of Hearing: 16/01/2018
Date of Decision: …………………

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. _________________ / 2018

Per : S.S GARG

These three appeals have been filed against the common impugned order dt. 13/09/2017 passed by the Commissioner(Appeals) whereby Commissioner(Appeals) rejected the appeals of the appellant and upheld the Orders-in-Original. Since the issue involved in all the three appeals is identical, all the three appeals are being disposed of by this common order.

2. The details of all the three appeals are given below:-

Appeal No.	Period	Demand	Refund claimed
E/21595/2017	10/2013 to 09/2014 10/2014 to 12/2014	Rs.7,60,557/- Rs.2,58,632/-	Rs.7,60,557/- Rs.2,58,632/-
E/21594/2017	01/2015 to 12/2016	Rs.16,87,978/- Rs.4,18,810/-	-- --
E/21593/2017	01/2016 to 03/2016 04/2016 to 06/0216 07/2016 to 09/2016	Rs.99,740/- Rs.2,23,508/- Rs.2,59,329/-	Rs.99,740/- Rs.2,23,508/- Rs.2,59,329/-

3. Briefly the facts of the present case are that the appellant is engaged in manufacturing of agricultural machinery parts falling under Chapter sub-heading 84329090 of First Schedule to the CETA, 1985 chargeable to 'nil' rate of duty. The entire production of the appellant is exported out of India. In the course of manufacture of agricultural machinery parts, steel scrap of about 9.5% to 11% also arises which is cleared by the appellant on payment of duty. Since duty was being paid on steel scrap, the appellant availed the CENVAT credit on inputs utilized by it. Thereafter the appellant, in terms of the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE(NT) dt. 18/06/2012, filed the refund claims for various period as stated in the table on the ground that the inputs used in the manufacture of agricultural machinery parts have been entirely exported and the appellants are unable to utilize the accumulated cenvat credit. The jurisdictional Assistant Commissioner issued show-cause notices as and when the refund claims

were filed, proposing to reject the refund claims and also to recover entire CENVAT credit on the ground that the final product being ‘nil’ duty product, CENVAT credit is erroneously availed and hence recoverable with interest and penalty is imposable. Further for the period between 01/2016 to 12/2016, show-cause notice was issued for demanding CENVAT credit even though no refund claim has been filed. When the appellant filed refund claim for first three quarters by this period, again show-cause notice was issued to deny refund. Some sums claimed as refund were also once again confirmed as demand and thus the demand of Rs.5,82,577/- for the period between 01/2016 to 09/2016 is duplicated.

4. Heard both the parties and perused records.

5. The learned counsel for the appellant submitted that the impugned order rejecting the appeals is not sustainable in law as the same has been passed without considering the facts and the law in proper perspective. He further submitted that the refund claim is squarely covered by Rule 5 of CCR, 2004 inasmuch as it is lying untutilised and accumulated on account of export of entire production. He further submitted that even if the products were chargeable to ‘nil’ rate of duty upon clearance to DTA, the assessee would be eligible to claim refund. In support of this submission, he relied upon the decision in the case of HTS Agrotech Industries Vs. CCE&ST [2017-TIOL-294-CESTAT-HYD]. He also submitted that dutiability or exemption matters only when the goods are cleared for home consumption. Exported goods are not exempt goods and

the authorities below have failed to appreciate this settled position of law. He further submitted that the excisable goods are exported, they cannot be saddled with any domestic duty as per the policy of the Government. He further submitted that the issue involved in the present case is no more res integra and has been settled by various decisions of the Tribunal and the High Court. In support of this submission, he relied upon the following decisions:-

i. CC Vs. ANZ International [2009(243) ELT 40 (Kar.)]
ii. CC Vs. ANZ International [2009(240) ELT A16(SC)]
iii. Jobelle Vs. CCE [2006(203) ELT 627 (Tri. Mum.)]
iv. City Central Mall Naski Pvt. Ltd. Vs. CCE&ST [2017-TIOL-4322-CESTAT-Mum.)]

6. He also submitted that the demand in appeal No.ST/21593/2017 is time barred inasmuch show-cause notice for demand was issued 23 months and 17 months respectively after the date of filing the refund claims. He also submitted that the demand of Rs.5,82,577/- under appeal No.ST/21595/2017 results in duplication of demand inasmuch as entired credit for the said credit has been demanded and confirmed in appeal No.ST/21594/2017.

7. On the other hand, the learned AR reiterated the findings of the impugned order.

8. After considering the submissions of both the parties and perusal of the material on record and the various decisions cited supra by the appellant, I am of the considered opinion that the issue involved in the present appeals is squarely covered in favour of the appellant by the

decision of the Hon'ble High Court of Karnataka in the case of CCE Vs. ANZ International Ltd. cited supra wherein the Hon'ble High Court has held that an EOU manufacturing exempt goods is entitled to take CENVAT Credit of duty paid on the inputs and can claim refund when such credit is unusable. This decision of the Karnataka High Court was challenged by the Revenue before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the SLP which is reported in 2009(240) ELT A16. Further I also find that in the case of Jobelle Vs. CCE cited supra, it was observed by the Tribunal that Government's policy is not to export duties and therefore export of exempted goods under bond is proper and there is no illegality in it. Therefore by following the ratios of the various decisions, I am of the considered view that the impugned order is not sustainable in law and therefore I set aside the same by allowing all the three appeals of the appellant with consequential reliefs if any.

(Pronounced on …………………………..)

S.S GARG
JUDICIAL MEMBER

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