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

Appeal(s) Involved:

E/25195/2013-SM

[Arising out of Order-in-Appeal No. 559/2012 dated 17/10/2012 passed by the Commissioner of Central Excise, Mangalore]

Torel Controls LLP Prarthana, 2nd Floor, Plot No.48, Sector 28, Vashi, Navi Mumbai – 400 703	**Appellant(s)**

Versus

Commissioner of Central Excise and Service Tax, Mangalore 7th Floor, Trade Centre, Bunts Hostel Rodd, Mangalore – 575 003 Karnataka	**Respondent(s)**

Appearance:

Shri. Cherian Punnoose, Advocate #311-312,'Commerce House' Above Hotel Chandrika, 9/1, Cunningham Road, Bangalore - 560 052 Karnataka	For the Appellant
Smt. Kavitha Poduwal, Superintendent (AR)	For the Respondent

Date of Hearing: 12/01/2018
Date of Decision: 12/01/2018

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

Final Order No. 20500 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 17.10.2012 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) rejected the appeal of the appellant. Briefly the facts of the present case are that the appellants are engaged in the manufacture of Automation System falling under Chapter 85 of the Central Excise Tariff Act 1985. They have filed a refund claim for Rs. 26,94,278/- (Rupees Twenty Six Lakhs Ninety Four Thousand Two Hundred and Seventy Eight only) being accumulated cenvat credit. The Deputy Commissioner, Central Excise, Mangalore I Division issued a show-cause notice dated 23.02.2012 for rejection of the claim under the provisions of Section 11B, as the appellant have failed to furnish requisite details and documents to justify the claim under Notification No. 05/2006-Ce (NT) dated 14.03.2006 issued under Rule 5 of Cenvat Credit Rules, 2004. The case was adjudicated by the Deputy Commissioner by rejecting the claim vide Order No. 20/2011-12 (R) (DC-1) dated 27.03.2012.

Aggrieved by the order of rejection, the appellant filed appeal before the Commissioner (Appeals) who also rejected the appeal. Hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the binding judicial precedent. He further submitted that the impugned order has not considered the material fact that the appellant has closed the factory in June 2012 and hence could not utilize the credit lying in balance and therefore they have requested for the refund under Rule 5. He further submitted that the factum of closure of factory was also stated before both the authorities but both the

authorities have not considered the said fact. He further submitted that when the operation and the factory is closed then the assessee is entitled for the refund of unutilized credit lying in the cenvat account. He further submitted that this issue is no more *res integra* and has been settled by the jurisdictional High Court of Karnataka in the case of Union of India Vs. Slovak India Trading Company Pvt. Ltd. reported in 2006 (201) E.L.T. 559. He further submitted that the decision of the Karnataka High Court has been affirmed by the Hon'ble Supreme Court and is reported in 2008 (223) E.L.T. A170. In addition to the above said decision, the appellant has also relied upon the following decisions in support of his submission:

a. *Bangalore Cables P. Ltd. Vs. CCE, Bangalore – 2017 (347) E.L.T. 100 (Tri.-Bang.)*
b. *CCE, Nasik Vs. Jain Vanguard Polybutlene Ltd. – 2010 (256) E.L.T. 523 (Bom.)*
c. *Commissioner Vs. Jain Vanguard Polybutlene Ltd. – 2015 (326) E.L.T. A86 (SC)*
d. *CCE, Hyderabad Vs. Apex Drugs & Intermediates Ltd. – 2014 (314) E.L.T. 729 (Tri.-Bang.)*
e. *CCE & ST, Hyderabad Vs. Apex Drugs & Intermediates Ltd. – 2015 (322) E.L.T. 834 (AP)*
f. *Shalu Synthetics Pvt. Ltd. Vs CCE & ST, Vapi – 2017 (346) E.L.T. 413 (Tri.-Bang.)*

4. On the other hand the learned AR defended the impugned order and submitted that the appellant has not brought on record any proof that the unit was closed in 2012 itself.

5. After considering the submissions of both the parties and perusal of the record, I am of the considered view that this issue is no more *res integra* and has been settled by the Hon'ble High Court of Karnataka in the case of *Slovak India Trading Co. Pvt. Ltd.* cited supra which stands affirmed by the Hon'ble Supreme Court cited supra. Further I find that the said decision has been subsequently followed by this Tribunal in the case of ***Bangalore Cables Pvt. Ltd. reported in 2017 (347) E.L.T. 100.*** Therefore, by respectfully following the ratio of the said decision, I am of the view that the impugned order is not sustainable in law and the same is set aside subject to furnishing the proof of closure of business by the appellant. Accordingly appeal is disposed of.

(Operative Portion of the Order was pronounced
in Open Court on **12/01/2018**)

(S.S GARG)
JUDICIAL MEMBER

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