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

Appeal(s) Involved:

ST/296/2009-DB
ST/Cross Objection No. 81/2009-DB

[Arising out of Order-in-Appeal No. 21/2009 dated 09/01/2009 passed by the Commissioner of Central Excise, Mangalore]

C.C.,C.E. & S.T-Belgaum No. 71, Club Road, Central Excise Building, Belgaum – 590 001, Karnataka	**Appellant(s)**

Versus

Bellary Iron Ores Pvt. Ltd. Modi Bhavan, 60/356-A, Hospet Road, Allipur, Bellary	**Respondent(s)**

Appearance:

Shri. K.B. Nanaiah, Assistant Commissioner (AR)	For the Appellant
Shri. Pradyumna G.H., Advocate	For the Respondent

Date of Hearing: 27/09/2018
Date of Decision: 03/10/2018

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21491/2018

Per : S.S GARG

The present appeal has been filed by the Revenue along with cross objection against the impugned order dated 09.01.2009 passed by the

Commissioner (Appeals). Briefly the facts of the present case are that the respondents are registered under the provisions of Section 68 (2) of the Finance Act 1994 under the category of 'Transportation of Goods by Road Services'. The respondents exported Iron Ore Fines and Lumps falling under Chapter Heading 26.01 of CETA and accordingly filed refund claim for Rs. 2,55,77,824/- (Rupees Two Crore Fifty Five Lakhs Seventy Seven Thousand Eight Hundred and Twenty Four only) with the Assistant Commissioner, Bellary Division in terms of Rule 5 of Cenvat Credit Rules 2004 filed on various input services used for manufacture and export of Iron Ore Fines for the period April 2006 to March 2007. The Assistant Commissioner issued the show-cause notice dated 28.09.2007 to the respondent proposing to reject the entire refund on the ground that the goods manufactured and exported by them were exempted from payment of excise duty by virtue of Notification No. 4/2006 CE dated 01.03.2006 and in terms of Rule 6(1) of Cenvat Credit Rules they were barred from availing the cenvat credit. After following the due process, the Assistant Commissioner vide order dated 22.02.2008 rejected the entire refund claim on the ground that the respondents were not eligible to avail the cenvat credit on the input services in the first place in view of the bar contained in Rule 6 of Cenvat Credit Rules. Aggrieved by the said order, respondent filed appeal before the Commissioner and the Commissioner (Appeals) vide the impugned order held that in view of the statutory provisions as well as ratios of various judicial decisions, the respondents were eligible to avail credit of service tax paid on input services when they were producing exempted excisable goods which were chargeable to ‘nil’ rate of duty. Aggrieved by the said order, Revenue has filed the present appeal.

2. Heard both the parties and perused the records.

3. Learned AR for the Revenue submitted that the impugned order is not sustainable in law on the ground that the respondents were not entitled to avail cenvat credit as they had manufactured exempted goods and had not furnished bond while exporting the goods. In reply to the contentions raised by the Revenue, the learned counsel for the respondent submitted that the Commissioner (Appeals) after consideration of the matter held that since Iron Ore Fines found a specific entry under Heading No. 2601 of CETA they were to be termed as ‘excisable goods’ and they were allowed to be cleared at ‘nil’ rate of duty by virtue of exemption contained under Notification No. 4/2006-CE dated 01.03.2006. Further the Commissioner (Appeals) has also held that as per Notification No. 36/2001 CE dated 26.06.2001 there was no requirement for the respondent to have obtained Central Excise registration in terms of Rule 9 of Central Excise Rules since the goods manufactured by them were chargeable to ‘nil’ rate of duty. He further submitted that once the goods are excisable goods which are exempted by way of a Notification, then there was no requirement for the respondent to have obtained registration certificate under Rule 9 in view of the exemption contained in Notification 36/2001 dated 26.06.2001. He further submitted that the Commissioner (Appeals) has rightly held that since the goods manufactured

and exported by the respondents were chargeable to 'nil' rate of duty therefore there was no requirement for them to have furnished bond or Letter of Undertaking. In support of his submission, he relied upon the following decisions:

a) *CC, Bangalore Vs. ANZ International – 2009 (233) E.L.T. 40 (Kar.)*
b) *Commissioner V. ANZ International – 2009 (240) E.L.T. A16 (S.C)*
c) *Final Order No. 22062/2017 dated 18.09.2017 passed by the CESTAT*
d) *Punjab Stainless Steel Industries Vs. CCE, Delhi-l – 2008 (226) E.L.T. 587 (Tri.-Del.)*
e) *CCE, Delhi – l Vs. Punjab Stainless Steel – 2009 (234) E.L.T. 605 (Del.)*
f) *Jolly Board Ltd. Vs. CCE, Aurangabad – 2017 (49) S.T.R. 620 (Tri.-Mumbai)*
g) *CCE & Cus. Aurangabad Vs. Jolly Board Ltd. – 2017 (50) S.T.R. 131 (Bom.)*

4. After considering the submissions of both the parties and perusal of the material on record, we find that the Commissioner (Appeals) has rightly held that the respondents are entitled to cenvat credit and there is no provisions contained in Rule 6(1) of the Cenvat Credit Rules when the final product is exempted from Central Excise duty by virtue of Notification 4/2006 CE dated

01.03.2006. Further we find that the Commissioner (Appeals) has relied upon various decisions which have consistently held that the assessee is entitled to avail credit of service tax paid on input services when they are producing exempted excisable goods which are chargeable to 'nil' rate of duty. Further we find that the Hon'ble Karnataka High Court in the case of **Commissioner of Customs Vs. ANZ International** cited supra it has been held that the provisions of Rule 6 of Cenvat Credit Rules are not applicable when the goods are exported under bond. The High Court judgment has been maintained by the Hon'ble Supreme Court and followed by the CESTAT, Bangalore in the Final Order No. 22062/2017 dated 18.09.2017 in the case of **Commr. of Central Excise Vs. Vibhutigudda Mines Pvt. Ltd.** Further we find that the ratio of the CESTAT decision rendered in the case of ***Punjab Stainless Steel Industries Vs. CCE, Delhi-I – 2008 (226) E.L.T. 587 (Tri.-Del.)*** is squarely applicable to the present case as the facts and circumstances are identical. It was held in this case that when the CBEC manual of instruction provides for input stage rebate on both excisable and non-excisable goods, a manufacturer is entitled to avail cenvat credit on inputs both for exported goods whether dutiable or exempted. The said decision of the CESTAT has been upheld by the High Court of Delhi reported in ***2009 (234) E.L.T. 605***. Further we find that in the case of **Jolly Board Ltd. Vs. CCE,** cited supra wherein it has been held that cenvat credit is admissible in terms of Rule 6(6) when goods are exported and there is no requirement to execute any bond if the exported goods are exempted. The said decision of the CESTAT has been affirmed by the Hon'ble High Court of judicature at Bombay reported vide *2017 (50) S.T.R. 131 (Bom.).* Therefore, by following the ratios of the above said decision of the Tribunal and the High Court, we are of the considered view that there is no infirmity in the impugned order passed by the Commissioner (Appeals) based on the decision of the Tribunal and the High Court. Consequently, we do not find any merit in the Revenue's appeal which is dismissed. Cross objection also accordingly disposed of.

(Order pronounced in Open Court on **03/10/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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