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

Appeal(s) Involved:

ST/21364/2018-SM

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-02-2018-19 dated 30/05/2018 passed by Commissioner of Central Excise & Central Tax, Mangalore Commissionerate, MANGALORE.]

M/s. Primacy Industries Ltd
P. No,7A, Baikampady Industrial Area,
Panambur,
MANGALORE - 575010
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise & Central Tax,
Mangalore Commissionerate
7th Floor, Trade Center, Bunts Hostel Road
Mangalore – 575 003.
Karnataka

Respondent(s)

Appearance:

Mr. Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp. Bank) 26th Main, 4th T Block, Jayanagar,
Bangalore - 560041
Karnataka

For the Appellant

Mr. K. B. Nanaiah, AR

For the Respondent

Date of Hearing: 17/10/2018
Date of Decision: 17/10/2018

CORAM:

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

Final Order No. 21617 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 10.5.2018 passed by the Commissioner, whereby the Commissioner has confirmed the demand of irregular CENVAT credit availed by the appellant amounting to Rs.11,28,077/- along with interest and equal penalty.

2. Briefly the facts of the present case are that the appellant is a 100% Export Oriented Unit engaged in the manufacture and export of designer candles falling under Central Excise Tariff Heading 3406 0010 of the Central Excise Tariff Act, 1985. They filed refund claim of Rs.70,79,945/- of the accumulated CENVAT Credit out of which Rs.54,23,321/- was pertaining to Goods Transport Agency (GTA) Services. The Revenue entertained a view that the appellants are not entitled to refund and therefore, they issued a show-cause notice proposing to deny credit to the extent of Rs.54,23,321/-. After due process, an amount of Rs.42,95,244/- was allowed and only Rs.11,28,077/- was disallowed. Against the said disallowance, appellant came before CESTAT whereby vide Final Order No.21258/2017 dated 31.7.2017, the Tribunal remanded the matter back to the Commissioner for fresh decision. On remand, the impugned order

was passed confirming the disallowance on the same credit. The details of which are given herein below:

Sl. No.	Amount of Credit	Nature of input service	Reason for denial
1	Rs.2,95,097/-	Outward GTA in respect of export of their goods (Post April 2008)	Definition excludes transportation after the place of removal.
2	Rs.1,31,346/-	Outward GTA in respect of export of their goods (Before April 2008)	Since the credit availed after 5 years, it is not proper – No dispute as to eligibility of credit.
3	Rs.7,01,634/-	Inward GTA	Since the credit availed after 5 years, it is not proper.

3. Heard both the parties and perused the records.

4. Learned consultant appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law. He further submitted that the impugned order is contrary to the binding Circular issued by the Board and also the binding judicial precedent on the same issue. He further submitted that the GTA services involved in the present case were received in respect of goods cleared for exports and the sample documentation and other details have also been enclosed. He further submitted that in the case of export, port is place of removal whereby the credit is not deniable and for this

submission, he relied upon the following decisions and the Circulars:

(i) ***Circular No.999/6/2015-CX dated 28.2.2015***
(ii) ***Circular No.1065/4/2018-CX***
(iii) ***Kennametal India Ltd. vs. CCE: 2016 (46) STR 57 (Tri.)***
(iv) ***Mahindra Reva Electric Vehicles (P) Ltd. vs. CCE: 2017 (3) GSTL 75 (Tri.)***

4.1 He further submitted that the other reason for denial of CENVAT credit is that the credit was availed after 5 years, which is not proper. He further submitted that as per the law, there is no time limit for availing CENVAT credit and for this submission, he relied upon the following decisions:

(i) ***CCE vs. Pierlita India Pvt. Ltd.: 2011 (273) ELT 535 (Tri.)***
(ii) ***Coromandel Fertilizers Ltd. vs. CCE: 2009 (239) ELT 99 (Tri.-Bang.)***
(iii) ***Steel Authority of India Ltd. vs. CCE: 2013 (287) ELT 321 (Tri.-Del.)***

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that in view of the Board Circular dated 28.2.2015 and in view of the decision of the Tribunal in the case of ***Mahindra Reva Electric Vehicles*** and

Kennametal India Ltd. cited supra, it is a settled issue that in the case of export, port is the place of removal and credit up to the port of export is an input credit, which the appellant is entitled to. Further, I find that there is no time limit prescribed under CENVAT credit scheme for availing the CENVAT credit and it has been so held in the case of ***Coromandel Fertilizers Ltd.*** and ***Steel Authority of India Ltd.*** cited supra. Therefore, by following the ratios of the above said decisions, I am of the view that the impugned order denying the credit on GTA on both the grounds is not sustainable in law and therefore, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **17/10/2018.**)

S.S GARG
JUDICIAL MEMBER

rv...