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

Appeal(s) Involved:

ST/301/2009

[Arising out of Order-in-Appeal No. 21-2009 dated 09/01/2009 passed by CCE(Appeals), Mangalore]

C.C.,C.E.& S.T-BELGAUM
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Appellant(s)

Versus

VIBHUTIGUDDA MINES PVT LTD,
MODI BHAVN, NO60/356-A,HOSPET ROAD,ALLIPUR, BELLARY.

Respondent(s)

Appearance:

Shri K.B. Nanaiah, Asst.Commissioner(AR) — For the Appellant

Shri G.H. PRADYUMNA, ADVOCATE — For the Respondent

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

Final Order No. 20598 / 2019

Date of Hearing: 15/07/2019
Date of Decision: 25/07/2019

Per : S.S. GARG

The present appeal is filed by the Revenue against the impugned order dt. 09/01/2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has ordered for de novo adjudication of the two appeals.

2. 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 had exported iron ore fines and lumps falling under Chapter Heading 26.01 of the CETA, 1995 and accordingly filed refund claim for Rs.61,77,798/- with the Assistant Commissioner, Bellary Division in terms of Rule 5 of Cenvat Credit Rules, 2004 (CCR, for short) availed on various input services used for manufacture and export of iron ore fines for the period April 2006 to March 2007. Thereafter the Assistant Commissioner of Central Excise issued a show-cause notice dt. 28/09/2007 to the respondents proposing to reject the entire refund claim of Rs.61,77,798/- on the ground that the goods manufactured and exported by them were exempted from payment of Central Excise duty by virtue of Notification No.4/2006-CE dt. 01/03/2006 and in terms of Rule 6(1) of CCR, they were barred from availing the CENVAT Credit. After following the due process, the original authority vide order dt. 21/02/2008 rejected the entire refund claim on the ground that the respondents were not eligible to avail the CENVAT credit on input services in the first place in view of the bar contained in Rule 6 of CCR. Aggrieved by the said order, appellant had filed the appeal before the Commissioner(Appeals) and the Commissioner(Appeals) held that in view of the statutory provision 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.

3. Heard both sides and perused records.

4. 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 have manufactured exempted final goods and had not furnished bond while exporting the

goods.

5.1. In reply to the contentions raised by the Revenue, the learned counsel for the respondents submitted that the Commissioner(Appeals) after consideration of the matter held that since the iron ore fines found a specific entry under heading 2601 of CETA and therefore they were to be termed as excisable goods and they were allowed to clear at nil rate of duty by virtue of exemption contained under Notification No.4/2006-CE dt. 01/04/2006. Further he submitted that the Commissioner(Appeals) has also held that as per the Notification No.36/01-CE(NT) dt. 26/06/2001, there was no requirement for the respondents to have obtained the 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 notification, then there was no requirement for the respondents to have obtained the registration certificate under Rule 9 in view of the exemption contained in Notification No.36/01-CE(NT) dt. 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, there was no requirement for them to furnish bond or Letter of Undertaking. In support of his submission, he relied upon the following decisions:-

i. CC, Bangalore Vs. ANZ International – 2009 (233) E.L.T. 40 (Kar.)
ii. Commissioner V. ANZ International – 2009 (240) E.L.T. A16 (S.C)
iii. Final Order No. 22062/2017 dated 18.09.2017 passed by the CESTAT
iv. Punjab Stainless Steel Industries Vs. CCE, Delhi-I – 2008 (226) E.L.T. 587 (Tri.-Del.)
v. CCE, Delhi – I Vs. Punjab Stainless Steel – 2009 (234) E.L.T. 605 (Del.)
vi. Jolly Board Ltd. Vs. CCE, Aurangabad – 2017 (49) S.T.R. 620 (Tri.-Mumbai)

vii. CCE & Cus. Aurangabad Vs. Jolly Board Ltd. – 2017 (50) S.T.R. 131 (Bom.)

viii. CC,CE&ST, Belgaum Vs. Vellary Iron Ores Pvt. Ltd. [Final Order NO.21491/2018 dt. 03/10/2018 by Tribunal, Bangalore]

5.2. The learned counsel for the respondents further submitted that this issue is no more res integra and has been settled in favour of the respondents in the respondents' own case for the earlier period by this Tribunal. He also submitted that in the case of Bellary Iron Ores Pvt. Ltd. cited supra, this Tribunal on identical issue has dismissed the Revenue's appeal by relying upon the decision of the Tribunal and the High Court on identical issue.

6. 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. Vibhuthigudda 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 was pronounced
in Open Court on **25/07/2019)**

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

Raja...