

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax appeal No.858 of 2009

[Arising out of Order-in-Appeal No. 303/2009 dated
24/07/2009 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

BELLARY IRON ORE PVT LTD.

MODI BHAVAN, 60/356-A, HOSPET ROAD,
ALLIPUR, BELLARY, KARNATAKA

Respondent(s)

Appearance:

Shri Rama Holla, Superintendent(AR) for the appellant.
Shri Pradyumna, G.H., Advocate For the respondent.

CORAM:

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No: 20140 / 2022

Date of Hearing: 16/02/2022

Date of Decision: 30/03/2022

Per : P DINESHA

The assessee-respondent had filed a refund claim for an amount of Rs.96,55,593/- under Rule 5 of CENVAT Credit Rules, 2004 (CCR, for short) which had remained unutilised, which was availed by them on the input services like Goods Transport

Agency, Port Services, BAS, Erection & commissioning, Installation service, repair & maintenance service, telephone charges, consultancy services, which were used in relation to the manufacture of iron ore fines falling under Chapter 2601, during the period April 2007 to September 2007. In the adjudication order dt. 15/05/2008, the assessee's claim came to be rejected primarily on the ground that the assessee was ineligible to avail the cenvat credit on the input services claimed. The assessee preferred an appeal before the First Appellate Authority who vide the impugned Order-in-Appeal No.303/2009 dt. 24/07/2009 directed the adjudicating authority to sanction substantial refund (except Rs.36,903/-), against which the present appeal has been filed by the Revenue.

2. Heard Shri Rama Holla, learned Superintendent(AR) for the Revenue and Shri Pradyumna, GH., learned advocate for the assessee/respondent.

3. The contentions of the Revenue are that the assessee was neither the holder of Central Excise registration under Rule 9 of Central Excise Rules, 2002 nor the holder of Service Tax registration under Section 68(2) of Finance Act, 1994; they were also not the providers of output service and the service tax registration obtained by

them under Section 68(2) was for the limited purpose of discharging service tax on GTA. The assessee was also not a manufacturer of dutiable final products and nor was it a provider of taxable output service and hence, the assessee was not entitled for cenvat credit on input service in terms of Rule 6(1) of CCR since the final product said to have been manufactured by them was unconditionally exempt from payment of duty.

4. *Per contra*, learned advocate would submit that the iron ore fines manufactured by the assessee finds a specific entry under heading 2601 of CETH which are termed as excisable goods and it is only the notification issued by the CBEC No.4/2006-CE dt. 01/03/2006 that allowed them to clear the same at 'NIL' rate of duty. It was, therefore, contended that once goods were found to be excisable goods then there was no requirement for obtaining registration certificate under Rule 9 *ibid.* and hence, in view of exemption vide Notification No.36/01-CE(NT) dt. 26/06/2001, the requirement of registration as contended by the Revenue lacks merit. He would also contend that there was no requirement of export the goods under bond or Letter of Undertaking since, as held by the First Appellate Authority, the goods manufactured and exported by the assessee were chargeable to 'NIL' rate of duty and there was no requirement to furnish bond or Letter of

Undertaking. He would also rely on a Final Order of this Bench in the assessee's own case for a different period wherein a similar issue was considered and the appeal was decided in the assessee's favour (Final Order No.21491/2018 dt. 03/10/2018).

5. We have heard the rival contentions and have gone through the orders / decisions referred to during the course of argument. We find, prima facie, that the issue is no more res integra since the same has been addressed to by this very Bench in the assessee's own case for a different period and laid to rest vide the Final order (supra). It has been held in the said Final Order, as under:-

" "

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.

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6. In view of the above, we do not find any merit in the appeal of the Revenue. Consequently, the same is dismissed.

(Order pronounced in the
Open Court on **30/03/2022**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

Raja...