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

Appeal No.ST/559/2011

[Arising out of Order-in-Appeal No.128/2011 (P-ST) dt. 06.07.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise,
Puducherry — Appellant

Versus

Les Ateliers De Pondicherry Pvt. Ltd. — Respondent

<u>Appearance :</u>

Shri B. Balamurugan, AC (AR)
For the Appellant

None
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 17.05.2018

<u>FINAL ORDER No. 41501 / 2018</u>

Per Bench

The facts of the case are that M/s. Les Ateliers De Pondicherry Pvt. Ltd., the respondents herein, are engaged in manufacture of shoe uppers etc. The respondents filed a refund claim for the year

2008-09 for an amount of Rs.96,73,426/- towards unutilized input service credit under Rule 5 of the CCR 2004 read with Notification No.5/2006-CE (NT) dt. 14.03.2006. The lower adjudicating authority had rejected the refund claim on the following grounds :

(i) The appellant had neither taken the Credit based on the input service invoice / documents in their Cenvat Registers, nor shown in their ER-2 returns filed with the Department, during the relevant period;

(ii) that part of the refund claim is hit by time bar under Section 11B of the Central Excise Act;

(iii) that they have taken Cenvat Credit on ineligible inputs as per 2(l) of the Cenvat Credit Rules, 2004;

(iv) that there are discrepancies of credit availed and hence the refund claim has to come down to Rs.96,22,331.22 as against Rs.96,73,426.04 as claimed by them; and

(v) that the appellant is having two separate units having separate Central Excise Registration, but they have filed a combined refund claim for unutilized input service tax credit under Notification No.5/2006-CE (NT) dt. 14.03.2006 read with Rule of the CEnvat Credit Rules, 2004.

On appeal, Commissioner (Appeals) vide impugned order dt. 06.07.2011 set aside the order of the original authority, held that respondents are eligible for refund claim, in principle, directed the respondents to file separate refund claim in respect of each unit and also directed the original authority to verify, process and sanction the refund claims as per law.

2. Revenue is aggrieved with the impugned order and has come in appeal on the following main grounds :

(a) Respondent was unable to produce proof of availment of cenvat credit based on relevant documents

(b) Commissioner (Appeals) erred in concluding that the claim is not hit by time bar.

(c) Eligibility of service tax paid on outward freight has not attained finality. The Commissioner (Appeals) has erred that respondents were eligible for refund of credit taken on printer and photocopiers.

3. On behalf of Revenue, Ld. A.R Shri B.Balamurugan reiterated the grounds of appeal. None present for the respondent.

4. We are unable to find much merit in the appeal of the Revenue. The lower appellate authority has analyzed each of the issues one by one and has come to a reasoned finding. The Commissioner (Appeals) has also directed the assessee to file separate refund claims. On the issue of eligibility of various input services which the Revenue has found fault, we find that the matter is now well settled in a number of decisions that the impugned credits related to the inputs services / inputs are very much eligible. The controversy concerning ‘relevant date’ to be reckoned for calculating the period prescribed for filing refund claim is also settled in favour of the respondents. In

the circumstances, no infirmity is found in the order of the Commissioner (Appeals) for which reason same is sustained and the Revenue appeal is dismissed.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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