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

Appeal No.E/136/2012

[Arising out of Order-in-Appeal No.82/2011 (M-III) dt. 02.11.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise,
Chennai-III — Appellant

Versus

Time Technoplast Ltd. — Respondent

Appearance :

Shri A. Cletus, ADC (AR)
For the Appellant

None
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing : 04.12.2018
Date of Pronouncement : 07.12.2018

FINAL ORDER No. 43033 / 2018

Per Shri Madhu Mohan Damodhar

When the matter was called out, respondent was not present nor were they represented by any counsel or authorized representative. It is seen that at least for the last four hearings, the respondent has not been present. In fact a notice dt. 01.11.2018 has been issued to the respondent categorically informing them that the hearing has been fixed on 4.12.2018 as a last chance. Hence proceed to take up the appeal for hearing and disposal.

2. On behalf of the Department, Ld.A.R Shri A.Cletus submits that the issue relates to refund application filed by respondent under Rule 5 of Cenvat Credit Rules,2004 read with Notification No.5/2006-CE (NT) dt.14.03.2006 for the period January 2008 to December 2008. The original authority vide order dt. 28.07.2009 rejected the claims on the ground that respondent had not fulfilled the basic condition stipulated under Rule 2 (a) of the said Notification No.5/2006-CE (NT) which requires that average export clearances of final products or the output services in value terms if 50% or more of the total clearances in the preceding quarter. Ld. A.R drew our attention to Order-In-Original at page-36 of the appeal filed where the adjudicating authority has clearly proved in tabular form that the required percentage has not been achieved by the respondent. However, in appeal, the Commissioner (Appeals) vide the impugned order has gone only into the aspect whether such refund claims can be filed only on quarterly basis or whether it can also be filed in other ways. The lower appellate authority has not gone into the precise ground of denial by the original authority, namely, non-fulfilment of condition 2 (a) of Notification No.5/2006-CE (NT). Ld.A.R also draws our attention in para 5.3 of the impugned order where the Commissioner (Appeals) has taken note of the respondent's claim that the clearances made by them to 100% EOU and SEZ are to be considered as export clearances. Ld. A.R submits that even if the said clearances are given the status of exports, they have not fulfilled the conditions stipulated under Notification o.5/2006-CE (NT) dt.

14.3.2006. For these reasons, Ld. A.R submits that the order of the Commissioner (Appeals) may be set aside and the order of original authority restored.

3.1 After going through the facts of the matter, we find that the Ld. A.R is correct in his assertion that the lower appellate authority has allowed the appeal without analyzing the grounds on which the refund claim had been rejected by the original authority. We find that the lower appellate authority though framed the issues in para 5.1 of the impugned order, these issues have not been suitably addressed in the remaining portion of the order. We also take note of the assertion of Ld. A.R that clearances made by respondents to 100% EOU and SEZ have already been considered by the original authority contrary to findings in para 5.3 of the impugned order by the lower appellate authority.

3.2 In view of the above reasons, we find that lower appellate authority had dwelt into the extraneous matters without addressing the grounds on which the original authority had rejected the claim. The impugned order setting aside the order of original authority and allowing the appeal filed by the respondent is therefore not backed up with any reason and analysis or application of mind. In the circumstances, we deem it fit and proper to remand the matter back to the Commissioner (Appeals) with directions to re-examine the appeal filed by the respondent and arrive at a reasoned decision after analysing the various grounds for rejection of refund claim in the order of the original authority. Needless to say in such de novo proceedings both the parties should be given suitable opportunity to present their case.

4. Appeal of the Revenue is therefore allowed by way of remand.

(Pronounced in court on 07.12.2018)

(P. Dinesha) **Member (Judicial)**	**(Madhu Mohan Damodhar)** **Member (Technical)**

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