CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.40483 of 2019

(Arising out of Order-in-Appeal No.57/2018 [CTA-II], dated 28.03.2018 passed by the Commissioner of GST & CE [Appeals-II], Chennai)

M/s. Sun Pharmaceuticals Industries Ltd., **: Appellant**
Satthami Village, Karunguzhi,
P.O. Madhuranthangam Taluk,
Kancheepuram – 603 303.

VERSUS

Commissioner of GST & CE, **: Respondent**
Newry Towers,
No.2054/1, II Avenue, 12th Main Road,
Anna Nagar,
Chennai 600 040.

APPEARANCE:

Ms. Mithula, Advocate for the Appellant

Shri B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)

FINAL ORDER NO. 41055 / 2019

DATE OF HEARING: 13.09.2019

DATE OF DECISION: 13.09.2019

Brief facts are that the appellants, who are engaged in manufacture of bulk drugs filed a VCES application on 30.12.2013. The application was accepted on the same date and acknowledgement was issued by the department on the same date. The appellants then vide different challans paid-up admitted the liability declared as per their application. On 02.07.2014, the department issued discharge certificate accepting the declaration filed by the appellants.

Thereupon, the appellant availed Cenvat credit on various input services as per their Cenvat credit register on 31.10.2014. Later a show-cause notice was issued to them alleging that the availment of credit on the basis of the discharge certificate dated 02.07.2014, is incorrect and also time-barred. After due process of law, the original authority disallowed the credit and confirmed the demand along with interest and also imposed penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellants, the learned counsel Ms. Mithula appeared and argued the matter. She referred to section 107(2) of Finance Act, 2013 as well as section 108 and submitted that the department has accepted the liability declared by the appellants and issued a discharge certificate only on 02.07.2014. Therefore, the appellants have correctly availed the Cenvat credit on 31.10.2014, which is within the time of limitation. The period for availing the credit is six months from the date of filing of documents. In the present case, the challan cannot be considered a the document for availing the credit since the tax has been accepted by the department vide the discharge certificate dated 02.07.2014 only. She relied upon the circular issued by the Board No.176/2/2014-ST, dated 20.01.2014 to submit that Cenvat credit can be availedon tax paid under VCES Scheme also. The decision in the case of *M/s.Neelikon Food Dyes & Chem. Ltd., Vs Commissioner of C. Goods & S.T., Belapur* reported in *2018 (364) E.L.T.989 (Tri.-Mumbai)* was also relied upon by her to support her arguments.

3. The learned Authorised Representative for the Revenue Shri B. Balamurugan, AC (AR) supported the findings in the impugned order. He adverted to Rule 9 of Cenvat Credit Rules, 2004 and submitted that discharge certificate is not a valid document for taking credit. As per Rule 9, the challan by which the tax is paid is the valid document for availing credit. The challans in the present case are dated 27.12.2013. The appellant has availed the credit on 31.12.2014 only. This is much beyond the period of six months prescribed by law and, therefore, the authorities below have rightly disallowed the credit.

4. Heard both sides.

5. The issue is with regard to disallowance of credit taken by the appellant after availing the benefit VCES. The appellant has applied for VCES on 30.12.2013 and the application was acknowledged on the same date. Before filing the application, they have deposited 50% of the admitted liability vide separate challans on 27.12.2013. The question is whether the appellants have to avail credit on the basis of these challans or the discharge certificate issued on 02.07.2014. As per Rule 9, the challans on which tax is paid is mentioned as document for taking credit. Incidentally, the said rule does not speak about the tax paid under VCES. The Board has issued a Circular dated 20.01.2014 from which it can be understood that Cenvat credit is eligible even if the appellant adopts for payment of tax under VCES. However, though it is a Circular of clarification, there is not much clarity in the Circular as to whether the assessee has to avail credit on the challans or the discharge certificate. While understanding the VCES, we have to note that the admitted liability is paid by the assessee vide challans even before making the application. The department has to scrutinize the application and, thereafter, only if satisfied as to the declaration made, the discharge certificate is issued. In case there is any discrepancy or if the department is not satisfied with the liability declared, the application is liable to be rejected. Thus, the tax paid by the appellant becomes final under VCES, only when the discharge certificate is issued. The appellants can then take the credit on the basis of discharge certificate only. Under VCES, the challans being an intermediary payment, such documents cannot be a conclusive document for availment of credit. Further, the assessee cannot be found fault with when the department vide its Circular referred above has shied away from unequivocally clarifying as to whether the asssessee can avail credit on challan for tax paid before filing VCES application or the discharge certificate issued after acceptance of declaration. For these reasons, I am of the view that the credit availed on the discharge certificate is legal and proper.

6. The Tribunal in the case of *M/s.Neelikon Food Dyes & Chem. Ltd.,* (supra) had occasion to decide the same issue. The facts of the said case reveals that a show-cause notice was issued proposing to deny the Cenvat credit availed on the discharge certificate alleging that it is not a proper document. The Commissioner (Appeals) accepted that discharge certificate is valid document but denied credit

observing that the appellants ought to have taken the credit on the basis of challans and that therefore credit availed is time-barred. The Tribunal held that when the Commissioner (Appeals) recorded finding that the discharge certificate is a valid document for availing credit, ought not to have travelled beyond the show-cause notice to hold that the appellants have to avail credit on challans. The department in the above case has accepted the discharge certificate to be a valid document for taking credit. The Board's Circular also clarifies that Cenvat credit is eligible on the tax paid under VCES. As discussed, only when the tax is finally accepted by department and the document is issued, the assessee would be able to avail the credit. For these reasons, the credit availed on the discharge certificate is legal and proper. The disallowance of credit is unjustified.

7. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
13-09-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	13.09.2019			
Draft Order - Date of typing	13.09.2019			
Fair Order Typing	13.09.2019			
Date of numbering and date of dispatch	13.09.2019			