IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/00318/2010

[arising out of Order-in-Appeal No.106/2010, dated 31.03.2010 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. THIAGARAJAR MILLS LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, MADURAI RESPONDENT

ST/00319/2010

[arising out of Order-in-Appeal No.150/2010, dated 31.04.2010 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. THIAGARAJAR MILLS LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, MADURAI RESPONDENT

Appearance:

For the Appellant Ms. S. Sridevi, Adv.
For the Respondent Shri K. Veerabhadra Reddy, JC (AR)

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **18-12-2017**

FINAL ORDER NO. 43456 - 43457 / 2017

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as the issue involved in both of them is same.

2. As per facts on record, the appellants are engaged in the manufacture and export of cotton yarn. In terms of the provisions of Rule 5 of Cenvat Credit Rules, 2004, they are entitled to the refund of

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accumulated unutilised Cenvat credit of duty, which they filed with their jurisdictional Central Excise authorities.

3. The Revenue objected to the said refund claims on the ground that the credit relates to various Port Services, Courier Services and GTA Services, which are post removal services and for which the service tax credit cannot be allowed. Accordingly, proceedings were initiated for denial of refund claim.

4. During adjudication, the Assistant Commissioner observed that the said services cannot be held to be covered by the definition of "Input Services" under Rule 2 (l) of Cenvat Credit Rules, 2004. However, he referred to another Notification No.41/2007-ST, dated 06.10.2007, which exempts the said services by way of refund to an exporter but denied the benefit of the same also on the ground that the refund claims were for the period beyond limitation, as provided in the said notification.

5. The appellants challenged the said order before Commissioner (Appeals) by reiterating their stand that the refund was claimed by them interms of Rule 5 of Cenvat Credit Rules, 2004 and not in terms of Notification NO.41/2007-ST, dated 06.10.2007. As such, the question of limitation, as prescribed in the said notification would not arise. The said plea of the appellants was not accepted and Commissioner (Appeals) who by examining the applicability of Notification No.41/2007-ST, dated 06.10.2007, rejected the claim.

6. The assessee's submission is that the claims were filed under Rule 5, which allows claiming of refund of unutilised credit. As regards, the availability of the credit, learned Advocate submits that the services in question are Port Services and in case of exports, the

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said services have to be held cenvatable. This stands held by various decisions of the Tribunal reference can be made to the following case laws:-

(i) *M/s. Lamtuf Plastics Ltd. Vs Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II* reported in *2016 (46) S.T.R.388 (Tri.-Bang.)*;

(ii) *Commissioner of Customs & Service Tax, Bangalore Vs M/s. Bioplus Life Sciences Pvt. Ltd.* reported in *2017 (49) S.T.R. 605 (Tri.-Bang.)*; and

(iii) *Commissioner of Central Excise, Surat Vs M/s.Heubach Colour Pvt. Ltd.* reported in *2017 (49) S.T.R.179 (Tri.-Ahmd.)*.

7. We, by appreciating the submissions made by both sides and after going through the impugned orders, we find that the contention made by learned Authorised Representative are factually incorrect. Order-in-Original passed by Assistant Commissioner very clearly observed in the finding portion as below:-

> "These services such as Port Services, Courier Services and GTA Services are post removal services and for which the service tax credit cannot be allowed as they do not have any relevance with in or in relation to the manufacture of goods as defined in Rule 2(l) of the Cenvat Credit Rules, 2004. However, as a measure of facilitating the exporter, service tax paid on such services is allowed for refund in terms of Notification No.41/2007-ST, dated 06.10.2007 as amended. Hence, this type of refund cannot be equated with regular refunds as prescribed in Rule 5 of Cenvat Credit Rules, 2004. In the later case, the manufacturer would be eligible for the credit of service tax and by virtue of exports, such credit could not be utilized and will be lying in balance in their Cenvat accounts."

8. Learned Authorised Representative Shri K. Veerabhadra Reddy on behalf of Revenue submits that as seen from show-cause notice and Order-in-Original and also from the Order-in-Appeal, the

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claim was not filed under Rule 5 of Cenvat Credit Rules, 2004. Show-cause notice and impugned order discussed Notification 41/2007- ST, dated 06.10.2007 and for the purpose of eligibility of the services on which refund is claimed is the point of contention. It is alleged in the show-cause notice, the services on which the refund claim has been made under Notification No.41/2007-ST, dated 06.10.2007 are said to be made eligible with respective dates. In the grounds of appeal, the appellants have not contested that they have filed refund claim under Rule 5. The issue all along pertained to time-limit aspect under Notification No.41/2007-ST, dated 06.10.2007, which the appellants have not fulfilled. Therefore, the refund claims were rejected apart from the refund on service tax paid on services availed by them on post manufacturing activity and not from the date specified in the notification. Therefore, the impugned order should be sustained and time-limit aspect and also on eligibility to certain services under Notification No.41/2007-ST, dated 06.10.2007.

As is clear from above, the refund claim filed in terms of Rule 5 but the adjudicating authority submits that the same cannot be equated with the refunds under Rule 5 and the benefit of Notification No.41/2007-ST, dated 06.10.2007 is required to be examined. Similarly, Commissioner (Appeals) in his impugned order has observed that ~~of~~ the appeal~~s~~lants filed a refund claim dated 03.05.2008 for such credit to the extent of Rs.1,02,031/- lying unutilized in their credit account, under Rule 5 of Cenvat Credit Rules, 2004. Similarly, while giving a finding on the said issue, he has observed as under in para 5.2 of his order:-

> "It is observed that even though the appellants filed the refund claim under Rule 5 of Cenvat Credit Rules, 2004 for the refund of unutilized credit of service tax paid on the impugned input services availed at the port, their refund claim can be considered for sactnion only under Notification No.41/2007-ST, dated dated 06.10.2007 as amended. This is because Rule 5 of Cenvat Credit Rules, 2004 is not applicable to the impugned services, which do not qualify as input serviced defined under Rule 2(l) of Cenvat Credit Rules, 2004 on the ground that these are post removal services not having any relevance with the manufacture of export goods."

9. As such, it is seen that the submissions made by learned Authorised Representative are factually incorrect submissions and against the observations made by Commissioner (Appeals). Even though, the said fact was brought to the notice of the learned Authorised Representative, he still insisted that the refunds were not filed within Rule 5. We really fail to understand and appreciate the above stand of the learned Authorised Representative inspite of clear finding of fact by Commissioner (Appeals) that the refunds were filed under Rule 5, he still insisted that the refunds were not filed under Rule 5.

10. In view of the foregoing, we proceed to deal the issue as the refunds were admittedly filed under Rule 5 of Cenvat Credit Rules, 2004. In such a scenario, it was not open to the adjudicating as also to appellate authority to go for the alternative availability of Notification No.41/2007-ST, dated 06.10.2007 and decide the issue in terms of the said notification, instead of deciding the refund claims in terms of Rule 5 under which the same were filed. Even though, the learned Advocate submits that Notification No.41/2007-ST, dated 06.10.2007 also grants relief to the assessee, inasmuch as, the period of limitation provided in terms of the said notification for filing refund claims was subsequently extended, we are of the view that such refunds are otherwise admissible in terms of Rule 5. There is no

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exemption applicability to Notification No.41/2007-ST, dated 06.10.2007. We allow both the appeals on legal issues and remand to original authority to examine the documentary evidences in support of the refund claims of the appellants for due consideration.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN) 23.1.18.
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
23-01-2018

Customs, Excise & Service Tax Appellate Tribunal

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