CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. IV

Excise Appeal No. 41722 of 2016-DB

(Arising out of Orders-in-Appeal No.105/2016 (CXA-I) dated 31.05.2016 passed by the Commissioner of Central Excise (Appeals-I), Chennai)

East Coast Organics Pvt Ltd
No.237/2, Vellivoyal Chavadi
Chennai – 600 103 **: Appellant**

VERSUS

Commissioner of Central Excise,
Chennai-I Commissionerate
No.26/1, Mahatma Gandhi Marg
Nungambakkam, Chennai – 600 034 **: Respondent**

WITH

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APPEARANCE:

Shri D. Santhana Gopalan, Advocate for the Appellant

Shri L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI C J MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 41747-41748 / 2019

DATE OF HEARING: 09/12/2019
DATE OF DECISION: 09/12/2019

Per: C J Mathew

The dispute, in this appeal of M/s East Coast Organics Pvt Ltd, arises from the rejection of claim for refund, under rule 5 of CENVAT Credit Rules, 2004, of □ 5,07,199/-, attributable to supplies effected, in the quarter ending September 2013, and of ₹ 5,48,907/-, attributable to supplies effected, in the quarter ending December 2013, to an 'export oriented unit' issued with Letter of Permission (LoP) under the Foreign Trade Policy. The refund sanctioned by the original authority was, on appeal of the Commissioner of Central Excise before the first appellate authority and despite an earlier decision in favour of the same assessee, set aside.

2. Among the several grounds cited by

Commissioner of Central Excise (Appeals), Chennai-I in orders-in-appeal no. 105 & 106/2016 (CXA-I) dated 31st May 2016 for reversal of the decision is the finding that the goods were not exported 'under bond' which, according to the first appellate, is a necessary, and inescapable, pre-requisite and that, these merely being deemed as 'exports', are not entitled to the same privileges as physical exports.

3. We have Learned Counsel for the appellant and Learned Authorised Representative.

4. The Tribunal has considered this issue on a number of occasions and has held that clearances effected to '100% export oriented units' are entitled for the refund envisaged under Rule 5 of CENVAT Credit Rules, 2004. The decision of the Tribunal in *Polaris Cables & Wires Pvt Ltd v. Commissioner of Central Excise, Mumbai [2016 (3) TMI–CESTAT-MUMBAI]*, in *Commissioner of Central Excise and Service Tax, Hyderabad-I v. Aurobindo Pharma Ltd [2018 (2) TMI 801–CESTAT-MUMBAI]* and in *Commissioner of Central*

Excise & Service Tax, Vadodara v. Shaily Engineering Plastics Ltd [2018 (1) TMI–CESTAT -Ahmedabad] are binding precedents for resolution of this dispute.

5. Though the expression 'export' is not defined in CENVAT Credit Rules, 2004, and as definition of the expression 'export goods' is limited to the computation formula, we are unable to concur with the sweeping premise adopted by the first appellate authority on the scope of the said rule. Both the Central Excise Act, 1944 and Central Excise Rules, 2000 are devoid of any definition of this expression. We are, therefore, compelled to arrive at our conclusion based on the scheme of the law pertaining to levy of central excise duties. The entitlement of refund of CENVAT credit arises from eligibility for the credit of duties/tax paid on inputs/input services used in the manufacture of goods or services and which cannot be adjusted against duty payable on clearance as the goods/services are exported. The predicament of the appellant herein is no different.

6. We take note that rule 6 of CENVAT Credit Rules, 2004 considers clearances to ‘export oriented units’ to be on par with physical exports and thereby entitling the manufacturers to availment of CENVAT credit on inputs/input services utilised for those very supplies. Furthermore, under rule 19 of Central Excise Rules, 2002, excisable goods, as well as any material used in the manufacture of excisable goods, that are exported are exempt from duties of central excise. The sourcing of excisable goods by ‘100% export oriented units’ can be for no purpose other than manufacture of export goods as can be seen from obligation under the scheme in Foreign Trade Policy that requires them to do so. It is in these circumstances that the decisions of the Tribunal *supra* have held that clearances to such units are not ‘exempted’ and hence entitled to the benefit under rule 5 of CENVAT Credit Rules, 2004. Accordingly, the impugned orders are set aside and the appeals are allowed.

(Pronounced in the open court)

(P DINESHA)
MEMBER (JUDICIAL)

(C J MATHEW)
MEMBER (TECHNICAL)

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