CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.52376 of 2018 (SM)

[Arising out of Order-in-Appeal No.47(SJ)CE/JPR/2018 dated 20.02.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur]

M/s.RSWM Ltd. **Appellant**
SP-1, Industrial Area, Reengus,
Distt.-Sikar (Rajasthan).

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax **Respondent**
New Central Revenue Building, C-Scheme,
Jaipur.

APPEARANCE:

Shri Ankit Totuka, Advocate for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51734/2021

DATE OF HEARING:09.04.2021
DATE OF DECISION:12.08.2021

ANIL CHOUDHARY:

The issue in this appeal is whether the court below has rightly allowed the refund of cenvat credit of AED (T&TA) under Rule 5 of CCR, in proportion of export turnover, thereby allowing refund of Rs.13,17,148/- instead of the claimed amount of Rs.22,54,910/-.

2. The brief facts are as under:-

M/s. RSWM Limited were availing cenvat credit on Polyester/Viscose/Arylic Fibres used in the manufacture of their final products. Both the inputs as well as final products of the unit were chargeable to Additional Excise Duty (Textile & Textile Articles) under Additional Duties of Excise (Textile & Textile Articles) Act 1978, till

08.07.2004, and later vide Notification No.31/2004-CE dated 09.07.2004, the said goods were exempted from AED (TTA) w.e.f. 09.07.2004. On the date of exemption, the respondent had a balance of AED (T & TA) of Rs.27,25,433/-.

2.1 In March, 2005, the respondent debited Rs.2,31,85,989/- from their Cenvat Credit Account with remark -- "Cenvat Credit reversed by us vide notification No.41/2001 dated 26.06.2001", and filed three rebate claims of the above said amount which included AED (T&TA) of Rs.22,54,910/-, under Rule 18 of Central Excise Rules. However, these claims were rejected on grounds that the respondent has already availed rebate of duty paid on final products and simultaneous availment of rebate of duty paid on inputs and on finished goods cannot be availed. The issue went through litigation and finally Govt. Of India vide order dated 7.5.2007, rejected the appeal of the respondent. The respondent filed a Writ Petition DBCWP No.1629/2008 before the Hon'ble High Court, which was dismissed as withdrawn. As the rebate was not allowed, they took re-credit of the above amount. Ex post facto permission was granted by the Asstt. Commissioner, Division Sikar, to the said availment of credit and the same was regularised on 12.05.2011. This re-credit included an amount of Rs.22,54,910/- on account of the credit of AED (T & TA).

2.2 The appellant vide their application dated 18.05.2011 claimed refund of unutilised balance of Rs.26,03,030/- of AED (T&TA) under Rule 5 of Cenvat Credit Rules, 2004, on the grounds that their goods became exempt from payment of AED (T&TA) with effect from 9.07.2004 vide Notification no.31/2004-CE dated 09.07.2004, and thus they were not in a position to utilise the said credit and refund of un-utilised accumulated credit of AED (T&TA) may be allowed to them in cash.

2.3 The said refund claim was rejected vide Order-in-Original No.5/refund/2012 dated 30.05.2012 on merits as well as on limitation. The appeal filed by the appellant herein was also rejected by the Commissioner (Appeals-I) vide order-in-appeal no.300(SLM)CE/JPR/2015 dated 30.04.2015.

2.4 On their appeal, this Tribunal in Final Order No.52012/2016 dated 2.6.2016 has held that they were in principle eligible for refund of AED(T&TA) under Rule 5 of Cenvat Credit Rules, 2004, however, the claim should be restricted to AED(T&TA) re-entered in the credit account by them in November, 2010, and falling under eligibility as per Rule 5 of the Rules. The matter was remanded to the Original Authority for determination of the eligible amount.

2.5 The Original Authority vide Order-in-Original No.91/Refund/16 dated 14.10.2016, sanctioned refund of Rs.22,54,910/- to the appellant under Rule 5 of Cenvat Credit Rules, 2004 stating that though there was a balance of Rs.26,03,030/- on AED (T&TA) on 9.7.2004, but as per the order of the Hon'ble Tribunal, it should be restricted to re-credit taken in November, 2010.

2.6 The Order-in-Original No.91/Refund/16 dated 14.10.2016 was reviewed by the Commissioner of Central Excise, Jodhpur under the powers conferred under Rule 35 E of the Act. Based on the order dated 26.12.2016 issued by the competent authority and the directions contained therein., the Asstt. Commissioner filed an appeal stating therein that the Adjudicating Authority has erred in sanctioning the entire refund claimed, as an amount of Rs.8,84,762/- was not admissible being in respect of AED involved on raw materials used in the manufacture of finished goods which were cleared domestically, and not exported. The following details were given in the appeal for above quantification:-

> *(i) As per details submitted by the claimant, the claimant had exported 1,88,475.80 kg. finished goods after 08.07.2004, which were lying in their finished goods stock as on 08.07.2004 and which were manufactured out of those inputs on which duty of AED (T& TA) was paid by the claimant. The claimant had used input materials 1,93,188 kgs. involving AED Rs.3,82,512/- for manufacturing of 1,88,475.80 kgs. exported finished goods.*

3. Ld. Commissioner, in the appeal of the Revenue recorded the following findings referring to the remand order of this Tribunal being Final Order dated 2.6.2016, wherein it has been observed :-

> *"Considering the above discussion and analysis, I find that the appellant is in principle eligible for refund of AED(T&TA) under Rule 5 of the Cenvat Credit Rules, 2004. However, considering the facts of the case and the applicability of time limit for such claim, as discussed above, the claim shall be restricted to the AED(T&TA) re-entered in the cenvat credit account by the appellant in November, 2010 and falling under the eligibility under Rule 5. As such the matter has to go back to the Original Authority to examine the eligible amount of refund in terms of above findings. The appellants shall file all the required details and documents in support of the claim including correct quantification of eligible amount. The appeal is disposed of in the above terms".*

He further held as follows:-

> *"5.3 Thus, it is evident from the above order that the claim should be restricted to the AED(T&TA) re-entered in the Cenvat Credit account by the appellant in*

November, 2010 and at the same time it should fall under the eligibility criteria as laid under Rule 5 of the Rules. The said Rule reads as under:-

5. Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilised by the utilised by the manufacturer or provider of output service towards payment of,

(i) duty of excise on any final product cleared for home consumption on for export on payment of duty; or

(ii)service tax on output service,

<u>And where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:</u>

(emp. Supplied)

5.4. Under Rule 5, refund of cenvat credit is allowable in respect of inputs used in the manufacture of final products, which are cleared for export when such credit cannot be used for payment of duty of excise on any final product cleared for home consumption or for export on payment of duty. The eligibility of the impugned cliaim could be verified under Rule 5 of the Rules only after verification of the relevant records and details to be submitted by the respondent. It is evident that the adjudicating authority did not call for the records to compute the AED (T&TA) and simply sanctioned the credit taken in November, 2010. If no verification was required, Hon'ble CESTAT would have done that at that stage itself. It was after the passing of the order, the departmental authorities called for the relevant records *which were submitted by the respondent vide letter dated 25.11.2016, 15.12.2016 and 23.12.2016 to the department and based on their verification, has computed the following:-*

(i) the quantum of finished goods in stock as on 8.7.2014 which were manufactured out of inputs on which AED was paid to the extent of Rs.3,82,512/-

(ii) the quantum of inputs and the AED (T&TA) involved therein amounting to Rs.4,69,009/- as on 8.7.2014 which were used in manufacture of finished goods exported after the said date

(iii) the inputs which were in process on the said date and the finished goods manufactured out of it and the quantum involved in goods exported out of said quantity manufactured amounting to Rs.4,79,926/-

(iv) the inputs receivged after 8.7.2014 on which AED ws paid and which were used in manufacture of goods exported amounting to Rs.39,693/- and I find from the above that the respondent had used input material involving AED of Rs.13,70,148/- only(Rs.3,82,512/- + Rs.4,69,009/- + Rs.4,79,926/-) for export of finished after 08.07.2004 and that as per Rule 5 of the CENVAT Credit Rules, 2004, out of total refund claim of Rs.22,54,910/-, they were entitled only to the extent of Rs.13,70,148/- and the refund of Rs.8,84,762/- [Rs.22,54,910 minus Rs.13,70,148/-] was not admissible, as the finished goods manufactured out of the raw materials were cleared domestically and were not exported.

5.5 In the light of the above, the appeal of the Asstt. Commissioner was well within the directions of the Hon'ble Tribunal inasmuch as the directions of the Hon'ble Tribunal were not followed by the lower authority. Moreover, the respondent has nowhere contested the outcome of the verification as contained in the appeal of the department that inputs involving AED(T& TA) to the extent of Rs.8,84,762/- have been used in manufacture of final *products cleared in domestic market. Thus out of their claim of refund of Rs.22,54,910/-, they were entitled to refund of Rs.13,70,148/- on account of AED (T&TA) involved on inputs used in manufacture of goods exported under Rule 5 of the Rules and the refund amount of Rs.8,84,762/- was erroneously granted to them vide impugned order.*

4. Being aggrieved, the appellant/assessee is in appeal.

5. Ld. Counsel for the appellant urges that Rule 5 of CCR though provides that where any input or input services is used in the manufacture of final product, which is cleared for export, or used in the intermediate products cleared for export. Cenvat credit in respect of input or input service so used shall be allowed to be utilised by the manufacturer towards the payment of excise duty on the final products cleared for home consumption or for export on payment of duty or payment of service tax on output service. Rule 5 further provides – where for any reason, such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

6. Further, CBEC vide Instructions No.267/11/2003-CX8 dated 22.03.2007, clarified that unutilised intermediate credit of AED (T& TA) can be claimed as refund under Rule 5 of CCR. Further, Board's Circular No.701/17/2003-CX dated 12.03.2003 clarifies that refund of AED (GSI) shall be allowed under Rule 5 of CCR, 2002 regardless of the fact that the said duty is not leviable on the finished products, has been made applicable to the AED (T&TA).

7. Thus, it is further urged that from perusal of Rule 5 of CCR read with the aforesaid two circulars, it is evident that there is no restrictions on the amount of refund of cenvat credit, which has remained un-utilised. Neither Rule 5 of CCR nor the aforesaid circulars provides for proportionate

calculation of refundable amount, being proportionate export turnover to the total turnover. Hence, in the impugned order, the Commissioner (Appeals) has erred in reducing the refund amount, on proportionate basis, by colourable exercise of powers and passed order ignoring the directions and clarifications issued by the Board. The balance amount of refund of Rs.8,88,762/- remains un-utilised due to withdrawal of duty of AED (T&TA) w.e.f 9.7.2004. Hence, it was rightly held in the order-in-original that the appellant is entitled to refund of entire amount of Rs.22,54,910/-, which has been erroneously reduced by the Commissioner to Rs.13,70,148/-. The availability of the untilised credit in the books of the appellant is undisputed and admitted. Further, Rule 5 of CCR does not debar the refund of unutilised credit of AED (T&TA) availed on inputs, utilised in the manufacture of final products cleared in domestic market.

8. It is further urged that there is no requirement of 1 to 1 correlation between the raw materials or input and the final product or output. Once credit has been rightly taken, it can be utilised for payment of either output central excise duty on any finished product or output service. Reliance has been placed on the ruling of the Apex Court in the case of **Tractor & Farm Equipment Ltd. – 2015 (324) ELT A-86 (SC).** Accordingly, he prays for allowing the appeal with consequential benefits.

9. Ld. Departmental Representative for Revenue relies on the impugned order and further states that one to one correlation is required of the inputs with the finished products or output, without referring to any rule or provisions from the Act or the Rules.

10. Having considered the rival contentions, I find that there is no restrictions of amount of refund of unutilised credit under Rule 5 of CCR. In view of the clear mandate of law, providing for refund – where for any

reason, such adjustment is not possible. Further, CBEC has clarified vide their circulars and instructions referred to hereinabove dated 12.03.2003 and 22.03.2007, which has also been relied upon by this Tribunal in its earlier Final Order dated 2.6.2016, in the same very matter, in the earlier round. I also hold that the impugned order-in-appeal is bad as the issue has attained finality vide the Final Order of this Tribunal dated 2.6.2016 and the matter was remanded to the Adjudicating Authority for the only purpose of arithmetic calculation. There being no appeal filed by the Revenue against the final order of this Tribunal dated 2.6.2016, the Revenue could not have filed further appeal before the Commissioner (Appeals). Thus, the impugned order is fit to be set aside on this score also. Accordingly, the appeal is allowed. The order-in-original is restored. The appellant is entitled to consequential benefits in accordance with law.

[order pronounced on 12.08.2021.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.