CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51461 of 2018 [SM]

[Arising out of Order-in-Appeal No. 44(SJ) CE/JPR/2018 dated 20.02.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Baba Super Minerals Pvt. Ltd. **...Appellant**
411, Alankar Plaza,
Central Spine, Vidhyadhar Nagar,
Jaipur – 302039 (Rajasthan)

VERSUS

Commissioner of Central Excise and Customs, Central Goods and Service Tax, Jaipur - I **...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

APPEARANCE:

Mr. Jatin Mahajan, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: **17.08.2022**
PRONOUNCED ON: **15.09.2022**

FINAL ORDER No. 50863 / 2022

DR. RACHNA GUPTA

The appellant in the present case is manufacturer of non excisable goods i.e. Quartz powder & Grits & Marble powder. The said Products fall under Tariff Item No. 2506 and 2517 which prescribes nil import tariff rate. The appellant vide an application dated 10.12.2015 had applied claiming the refund of Cenvat credit of an amount of Rs.12,14,299/- in terms of Rule 5 of Cenvat Credit Rules, 2004. After being scrutinized the claim was proposed to be rejected vide Show Cause Notice No. 6699/2015 dated 31.12.2015 on the ground that since the goods were exported without payment of duty but not under the bond or the letter of undertaking, that appellant was denied to claim the benefit of Rule 6(1) of Cenvat Credit Rules, 2004. Violation of Rule 9(2) and Rule 11(2) of Central Excise Rules was also alleged. The said proposal of rejection was initially confirmed vide Order-in-Original No. 02/2016 dated 13.05.2016. The appeal thereof has been rejected vide Order-in-Appeal No. 44/2018 dated 20.02.2018. Being aggrieved the appellant is before this Tribunal.

2. Learned Counsel for the appellant has submitted that the denial of refund to the appellant for want of bond or letter of undertaking is highly unreasonable. It is submitted that bond/letter of undertaking is required only when there is a duty liability on the exported goods. But in the present case the finished goods exported by the appellant were having nil rate of duty. Hence, the same is merely a procedural lapse. Reliance has been placed on the decision of **Jolly Board Ltd Vs. Commissioner of Central Excise, Aurangabad reported as 2015 (321) ELT 502 (Tri. Mumbai)**, wherein the decision of High Court of Himachal Pradesh in the case of **Commissioner of Central Excise Vs. Drish Shoes Ltd. reported as 2010 (254) ELT 417 (H.P.)** was relied upon. Learned Counsel has also relied upon the decisions of this Tribunal in the case of **Well Known Polyesters Ltd. Vs. Commissioner of C.Ex., VAPI reported as 2011 (267) E.L.T. 221 (Tri.-Ahmd.), Kapil Additive Vs. Commissioner of Central Excise, Cheennai-II reported as 2017 (358) E.L.T. 772 (Tri.-Chennai), Arvind Ltd. Vs. Commissioner of C.Ex., Ahmedabad-III reported as 2016 (334) E.L.T. 146 (Tri. Ahmd.), Commissioner of C.Ex.,**

Ahmedabad-III Vs. Gujarat Ambuja Exports Ltd. Reported as 2014 (311) E.L.T. 718 (Tri.-Ahmd.), Sabare International vs. Commissioner of Central Excise, Trichy reported as 2014 (308) E.L.T. 609 (Tri.-Chennai) and King Metal Works vs. Commissioner of Central Excise, Mumbai-IV. It is further submitted that the appellants were otherwise entitled for the refund of Cenvat credit in terms of sub-rule 6 (v) of Rule 6 of Cenvat Credit Rules, 2004. With respect to the compliance of Rule 9 (2) and Rule 11 (2) of Cenvat Credit Rules, 2004, it is submitted that since the appellants had already provided the documents in support of the refund claim which were having all such particulars as are mentioned in the proviso to Rule 9 (2) of CCR, 2004 that the rejection of refund on the ground of lack of documents specifically as that of invoices is highly unjustified. Order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

3. Per contra learned DR while laying emphasis upon the findings in para 7.10 and 7.11 has given sufficient reason for rejection of refund on three of the grounds. Impressing upon no infirmity in the order department has prayed for the dismissal of appeal.

4. Having heard the rival contentions and perusing the entire records. I observe and hold as follows:

4.1 The refund claim of Cenvat credit on imports as was filed by appellant on 29.10.2015 for an amount of Rs.12,14,299/- has been rejected on following three grounds:

(i) The refund has been claimed under Rule 5 of Cenvat Credit Rules, 2004. Since they were manufacturing the product which attracts nil rate of duty, accordingly, they are denied to take Cenvat credit of inputs.

(ii) The particulars required to be mentioned in terms of Rule 9(2) of Cenvat Credit Rules are not reflected in the invoices issued by one of the supplier of the appellant.

(iii) The claim of refund pertains to the period from 30.10.2014 to 29.10.2015 during which the appellant was not having any central excise registration.

5. The ground wise findings are as follows:

5.1 Manufacturer of final product is eligible for Cenvat credit in terms of Rule 3 of Cenvat credit of the duty of excise as specified in sub-rule (1)(i) to (xi). Sub-rule (2) there of reads as follows:

> *"Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer of producer cease to be exempted goods or any goods become excisable."*

6. The perusal of this provisions makes it abundantly clear that manufacturer is allowed to take the Cenvat credit only when the manufactured product attracts some duty of excise/some kind of cess/some other kind of tax. Admittedly, the appellant's final product i.e. quartz was subject to nil rate of duty.

7. Coming to Rule 5 under CCR, 2004 which the impugned claim has been filed, it is clear that no doubt refund of Cenvat credit is available to a manufacturer who clears a final product for export without payment of duty but the mandate of such clearance is that it should be under bond or letter of undertaking. Admittedly, the appellant has not exported manufactured quartz under bond or letter of undertaking. The object of this bond or letter of undertaking is that the registered person binds itself to pay the leviable duty/tax along with the interest at a subsequent date when at the time of export he is not willing to pay the duty or is not in a position to pay the same. This means that bond or letter of undertaking shall be furnished only in the case where the manufactured goods attract certain rate of excise duty. In the present case, the goods admittedly were subjected to nil rate of duty, question of furnishing of bond or letter of undertaking does not at all arise. Thus, to my opinion, refund does not appear to be maintainable under Rule 5 of Cenvat Credit Rules, 2004.

8. Notification 42/2001-CE (NT) dated 26.06.2001 as amended lays down the conditions and procedures for export of all excisable goods except to Bhutan without payment of duty from the factory of the production or the warehouse of the manufacturer or any other premises as may be approved by the Commissioner Central Excise. Condition (iv) of the said Notification lays down that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export-oriented undertaking, shall not be allowed under this notification. Therefore export under bond of excisable goods which is chargeable to Nil rate of duty or

unconditionally exempted, the exporter cannot avail credit of duty paid on the inputs used in the manufacture of said goods. However, he can claim rebate of duty paid on inputs used in the manufacture of excisable goods which are exported under rule 18 of Central Excise Rules, 2002. The procedure for claiming such rebate is laid down in Notification No.21/2004-CE (NT) dated 06.09.2004 as amended Or can claim duty drawback under Customs, Central Excise Duties and Service Tax Drawback Rule, 1995

9. Further, perusing Rule 6 of CCR, 2004, it becomes clear that Cenvat credit shall not be allowed to a manufacturer of final product on such quantity of input as is used in or in relation to the manufacture of exempted goods. Rule 6 of the Cenvat Credit Rules, prescribes the procedure of Cenvat credit on the manufacturer who Manufacturers both dutiable and exempted products. In this situation, the following options are prescribed:

- No Cenvat Credit on the inputs used exclusively in the exempted goods
- To maintain separate inventory for common inputs used in both dutiable and exempted goods
- If not possible to maintain separate inventory, the manufacturer is required to pay 6% of the value of the product at the time of clearance; or
- to follow the prescribed under sub-rule 3A (formulae based)
- To inform the option exercised (any of the above) to the department which is not to be withdrawn in the remaining part of the financial year in which such option is exercised.

However, certain categories of clearances are not covered under the purview of the above Rule and one among them was "Export under Bond". Unfortunately, by amending the Notification No. 42/2001-CE (pertaining to Export under Bond procedure), facility of export of exempted goods under Bond was withdrawn vide Notification No. 24/2010-CE (NT) Dated 26.05.2010. In view of the above background, it is clear that goods subject to nil rate of duty are not eligible for Cenvat credit on the inputs used in the export of exempted goods.

10. As per Rule 6 (1) of CCR, 2004 no Cenvat credit will be available in respect of inputs used in manufacture of exempted products. Though Rule 6 (6) (v) creates an exemption *inter alia* in respect of excisable goods removed without payment of duty for export but only for those exports as were made under bond in terms of Central Excise Rules, 2002. As already observed above the export in the present case has not been made under bond. Though learned Counsel has relied upon the decision of Hon'ble High Court of Himachal Pradesh in the case of **Commissioner of Central Excise Vs. Drish Shoes Ltd. reported as 2010 (254) ELT 417 (H.P.)** . But it is perused that the said decision has been passed based upon the exception as was given in Rule 6(5) of CCR, 2002. It has been brought to my notice that Rule 6(5) stands omitted w.e.f. 1st April, 2011. Decision of **Drish Shoes Ltd.** (supra) is a decision prior the said amendment. That is decision of the time when the exception of 6(5) Rule was in the statute books. Hence, post amendment when the said exception clause has been omitted, decision of **Drish Shoes Ltd.** (supra) holds no good law. All other decisions which have been relied upon by learned Counsel

since follows **Drish Shoes Ltd.** (supra) decision, hence are not applicable. Sub-rule 6 also though relied upon by the appellant as an exception, but as already observed above the said exception is applicable though in case of excisable goods removed without payment of duty but only when they are cleared for export under bonds in terms of provisions of Central Excise Rule, 2002. Hence the exception as prayed for are found not available to the appellant.

11. In the given circumstances, to my opinion, the appellant was not entitled to claim the Cenvat credit of duty paid on imports used in manufacture of the product to which nil rate of duty was applicable. In such situation if some credit has been availed Rule 14 should have first been applied by the department. In the present case, it is not coming apparent as to whether said rule 14 has been complied with by the department prior rejecting the impugned refund. Accordingly, I deemed fit for the present matter to be remanded back to the original Adjudicating Authority to check for the compliance of Rule 14 CCR, 2004 and then to freshly adjudicate the impugned refund. As a result of entire above discussion, present appeal stands allowed by way of remand.

[Order pronounced in the open Court on **15.09.2022**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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