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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1059/2011 - EX[DB]   Date **03/05/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TRICOLITE ELECTRIAL INDUSTRIES LTD.,
PLOT NO. 5, SECTOR-6, IMT MANESAR GURUGAON
(HARYANA)

M/S TRICOLITE ELECTRIAL INDUSTRIES LTD., Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/497 **2012 EX[DB]** dated 02-5-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)
2. Adv. / Consult SH. O.P. KHURANA,
FLAT NO. 30-D, POCKET-4,
MAYUR VIHAR PHASE-I
DELHI-91
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 1059 of 2011

[Arising out of the Order-in-Appeal No. 130/BK/GGN/2011 dated 08/04/2011 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Tricolite Electrical Industries Limited — Appellant

Versus

CCE, Delhi – III, Gurgaon — Respondent

Appearance

Shri O.P. Khurana, Authorised Representative – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 16/04/2012.
DATE OF DECISION : 2/5/2012.

FINAL Order No. A/497/2012-Ex(BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant manufacture custom built switchgear and panels chargeable to Central Excise duty under sub-headings 85371000, 85372000 of the Central Excise Tariff. They avail Cenvat credit of Central Excise duty paid on inputs and capital goods and of service tax paid on input services under the provisions of Cenvat Credit Rules, 2004. The period of dispute in this case is 2008-2009. The appellant in addition to domestic sales which are very small, also supplied goods to SEZs, 100% EOUs and also Delhi Metro Rail Corporation (DMRC) by availing exemption under Notification No. 6/06-CE dated 1/3/06 which are treated as deemed exports. The appellants in terms of sub-Rule (6) of Rule 6 of the Cenvat Credit Rules, 2004 were eligible to avail Cenvat credit in respect of inputs or input services used in or in relation to manufacture of the finished products supplied to 100% EOUs, SEZs and DMRC by availing Notification No. 6/2006-CE. Since they have very few domestic clearances on payment of duty, the accumulated Cenvat credit could not be utilised by them on clearances to home market. The appellant, therefore, applied for cash refund of the accumulated Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004 readwith Notification No. 5/06-CE (NT) dated 14/3/06 under this Rule. Their claim for cash refund under Rule 5 of Cenvat Credit Rules was decided by the Jurisdictional Assistant Commissioner vide order-in-original dated 10/3/2010 by which while the refund of Rs. 21,02,115/- in respect of supplies to SEZ was allowed, the refund of Rs. 21,76,021/- in respect of supplies to other 100% EOUs and DMRC was disallowed on the ground that these supplies, though deemed exports, are not covered by Rule 5 of the Cenvat Credit Rules. On appeal to Commissioner (Appeals), the appeal was dismissed vide order-in-appeal dated 8/4/11. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri O.P. Khurana, Consultant, the learned Counsel for the appellant, pleaded that cash refund is admissible in respect of supplies to 100% EOUs and also in respect of supplies to DMRC by availing Notification No. 6/2006-CE, as these supplies are deemed exports, that in this regard he relies upon the judgment of the Tribunal in the case of **CCE, Thane – I vs. Tiger Steel Engineering (I) Pvt. Ltd.** reported in **2010 (259) E.L.T. 375 (Tri. – Mumbai)** and that in view of this, the impugned order is not correct.

4. Shri S.R. Meena, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasised that the Tribunal's order in the case of **CCE, Thane – I vs. Tiger Steel Engineering (I) Pvt. Ltd.** (supra) cited by the appellant is in respect of clearances by a DTA unit to a SEZ, which in view of the provisions of Section 2(m) of SEZ Act, 2005 have to be treated as exports, that for this reason only the appellant have already

been allowed cash refund of accumulated Cenvat credit in respect of supplies to SEZs, that in respect of supplies to other 100% EOUs, the appellant are not eligible for cash refund of accumulated Cenvat credit, that there is no evidence that EOUs have used those inputs in the manufacture of finished products which were exported out of India under bond, that so far as supplies to DMRC by availing full duty exemption under Notification No. 6/2006-CE are concerned, though the same are treated as deemed exports in terms of provisions of the EXIM policy, the provisions of Rule 5 of the Cenvat Credit Rules, 2004 are not applicable to the same, as these provisions are applicable only in respect of in those cases where the finished products made out of cenvated inputs/ inputs services have been cleared for exports under bond or letter of undertaking or have been used in the manufacture of intermediate product cleared for export and the supplies to DMRC do not fall in this category, that the supplies to DMRC by availing Notification No. 6/2006-CE, though treated as deemed exports under the EXIM policy, are not exports and cannot be treated as export under bond for the purpose of Rule 5 of the Cenvat Credit Rules, that cash refund of accumulated Cenvat credit in respect of supplies to 100% EOUs and DMRC by availing Notification No. 6/2006-CE had been correctly denied and, as such, there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records.

6. The point of dispute in this case is as to whether cash refund of accumulated Cenvat credit in respect of inputs/input services used in manufacture of finished goods, which were either supplied to other 100% EOUs or supplied to DMRC by availing full duty exemption under Notification No. 6/2006-CE is admissible or not in terms of the provisions of Rule 5 of the Cenvat Credit Rules. Rule 5 of the Cenvat Credit Rules provides that where any input or input services have been used in the manufacture of final product which is cleared for export under bond or letter of undertaking, or as the case may be, is used in the manufacture of intermediate product cleared for export, or used for 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 manufacturer or provider of output service towards payment of duty of excise on any final product cleared for home consumption or for export on payment of duty or for payment of service tax on output service and where for any reason, such adjustment is not possible, the manufacturer or the provider of outward service shall be allowed the refund of such amount subject to the safeguards, conditions and limitations as specified by the Government by Notification. This cash refund of accumulated Cenvat credit is subject to condition that the manufacturer/ provider of output service does not avail the input duty drawback or input duty rebate. From perusal of this Rule, it is clear that this Rule is applicable only in respect of the use of Cenvat credit availed inputs or input services for manufacture of

the goods which are cleared for export under bond/letter of undertaking or are used in the manufacture of intermediate product cleared for export. While the supplies to SEZ are to be treated as export for the purpose of this Rule in terms of the provisions of Section 2 (m) of SEZ Act, 2005, the supplies to DMRC by availing Notification No. 6/2006-CE which though deemed exports in terms of the provisions of EXIM policy, cannot be treated as export for the purpose of Rule 5 of Cenvat Credit Rules, 2004. Therefore, we are of the view that the provisions of this Rule are not applicable in respect of accumulated Cenvat credit on account of supplies to DMRC by availing full duty exemption under Notification No. 6/2006-CE. As regards supplies to 100% EOUs, as rightly observed by the Commissioner (Appeals) there is no evidence that the goods have been used by those EOUs in manufacture of finished product which were exported out of India under bond.

7. In view of the above discussion, we do not find any infirmity in the impugned order. The appeal is dismissed.

(Order pronounced in the open court on 2/5/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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