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

DATE OF HEARING : 27/01/2017.
DATE OF DECISION : 07/02/2017.

Excise Appeal No. 1115 of 2010

[Arising out of the Order-in-Original No. 19/2009 dated 26/02/2010 passed by The Commissioner of the Central Excise, Delhi – II, New Delhi.]

M/s Welspring Universal — Appellant

Versus

CCE, Delhi – II — Respondent

Appearance

Shri Prabhat Kumar, Advocate – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50667/2017 Dated : 07/02/2017

Per. B. Ravichandran :-

The appeal is against order dated 26/02/2010 of Commissioner of Central Excise, Delhi – II. The appellants are engaged in the manufacture of welding machine tools/accessories and are a 100% EOU. They were availing Cenvat credit on inputs in terms of Cenvat Credit Rules, 2004. They have removed 36 consignments for export under ARE-1s with prior intimation to the Department, on payment of duty on final products, under the claim of rebate. The total duty paid is Rs. 76,72,000/-. Thereafter they filed rebate claims in respect of 25 ARE-1s. An amount of Rs. 7,88,553/- was sanctioned as rebate in respect of 4 claims vide original order dated 22/02/2008 by the Jurisdictional officer. Subsequently the Jurisdictional Superintendent directed the appellant to payback the amount as the rebate was erroneously sanctioned to them. They accordingly deposited the said amount alongwith interest and intimated the Jurisdictional Assistant Commissioner. The pending rebate claims were also withdrawn with a note that they will be filing a fresh refund claim under Rule 5 of Cenvat Credit Rules. Thereafter, they filed three refund claims under Rule 5 of the said rules for the quarters relevant to the 36 exports made by the appellant. The Jurisdictional Assistant Commissioner rejected the refund claims.

2. The appellant also took the re-credit of Rs. 76,72,000/- paid against 36 ARE-1 and intimated the Jurisdictional Assistant Commissioner. The present proceedings were with reference to recovery of Rs. 7,88,553/- erroneously sanctioned as rebate and to disallow the credit of Rs. 76,72,000/- taken by the appellant. The Original Authority held that the Cenvat credit taken by the appellant is without support of documents prescribed under Rule 9 and such credits can be taken only on inputs in terms of Rule 3 of the Cenvat Credit Rules, 2004. He also held that the rebate already sanctioned is inadmissible to the appellant. He imposed a

penalty of Rs. 1,53,000/- in terms of Rule 15/15A of Cenvat Credit Rules, 2004.

3. The learned Counsel for the appellant submitted that the exports by the appellants under form ARE-1s were not disputed. They have paid duty on these exported consignments and produced proof of exports. They have filed rebate claims, some of which were sanctioned by the Jurisdictional officer. Thereafter, the Department advised to withdraw the claim and also to repay the sanctioned amount on the ground that 100% EOU are fully exempt from payment of duty in terms of Notification 24/2003-CE dated 31/03/2003. The exports should have been made under bond in terms of Rule 19 of Central Excise Rules, 2002. The learned Counsel submitted that the unit of the appellant is under control and supervision of the officers and the ARE-1s were approved and in fact some of the claims of rebate have also been sanctioned. In such scenario, it is not tenable to hold that the appellant erroneously paid duty on export items and claimed inadmissible rebate. The appellants are correctly eligible for refund of accumulated Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules. There is no finding by the Original Authority on this.

4. The learned AR reiterated the findings of the Original Authority and stated that the export from EOUs is to be under bond and there is no claim for rebate admissible in such situation.

5. We have heard both the sides and perused the appeal records. It is clear that appellants being 100% EOU are not liable to pay any duty in terms of Notification 24/2003-CE. The said exemption which is unconditional has to be followed by the EOU. Reference can be made to the decision of Hon'ble Rajasthan High Court in **Vanasthali Textiles Industries Ltd. vs. Union of India** reported in **2015 (321) E.L.T. 89 (Raj.)**. Accordingly, the view of the Original Authority that the appellants are not eligible for rebate claim in terms of Rule 18 of Central Excise Rules, 2002 is correct. However, we note that the said amount was sanctioned after due adjudication by the Jurisdictional Assistant Commissioner. The order-in-original dated 22/02/2008 was not reviewed for filing appeal. In fact show cause notice dated 02/02/2009 issued in this case states that on re-examination of the issue, the rebate claims were found to be wrong. The show cause notice was issued without any review and appeal of order-in-original passed by the Assistant Commissioner. Accordingly, the impugned order to the extent that it seeks to reverse the decision of Original Authority without following the appeal proceedings is legally not tenable.

6. Regarding clearance of export goods under ARE-1 on payment of duty and thereafter filing of rebate claims the impugned order did not elaborate as to how such a thing was not examined and correct action taken by the Jurisdictional officers in control of EOU. In fact, the impugned order states the assessee

did a mistake and deposited the amount voluntarily without ever mentioning how such rebate was examined and sanctioned by the Jurisdictional officer.

7. Regarding the availment of Cenvat credit of Rs. 76,72,000/- we note that the whole issue cropped up only because of irregularity of the procedure followed by the appellant in exporting the goods on payment of duty in terms under various ARE-1s. Surprisingly, the Revenue become party to such action as the ARE-1s and the claims were examined and considered by the Jurisdictional officers. Had the appellant being given a proper instruction on the non-admissibility of export under claim for rebate, the question of paying duty on export goods would not have arisen. Admittedly, the credit now suo-moto availed by the appellant is the amount they have already discharged on the export consignments. The duty was discharged out of Cenvat credit availed on inputs and available in their books of accounts. There is no finding as to correctness of such credits availed by the appellant. Impugned order is silent about the origin of such credits. It only talks about suo-moto re-credit availed by the appellant equivalent to the amount debited in the Cenvat account on export consignments. First of all, it is necessary to ascertain the correctness of the credit availed on various inputs by the appellant. If those credits were correctly availed then the same is available in the books of accounts of the appellant to be dealt with in accordance with law. Further, the appellants claimed eligibility for refund of accumulated credit

available in their Cenvat account. Since, they could not utilize the accumulated Cenvat credit, provisions of Rule 5 of Cenvat Credit Rules will come into play for deciding the eligibility of the appellant for refunds. We note that the appellants submitted that the Assistant Commissioner has rejected the refund claims filed under Rule 5 of the Cenvat Credit Rules, 2004 on the ground that there is no balance of Cenvat credit in the accounts of the assessee. Accordingly, re-credit of Cenvat credit was not allowed. It was further submitted that the appellants have filed appeal against the said rejection.

8. As can be seen from the above narration, substantial complication in the case is brought in by appellant not following the correct procedure at the time of export of goods which is compounded by the improper action of the jurisdictional officers in entertaining and sanctioning the part of the rebate claim and thereafter following informal procedure of advising the assessee to withdraw the claims. Without further elaborating on various mis-steps taken by the appellant as well as the Department it can be stated that in the end result the lower authorities used their quasi-judicial powers to reject all kind of relief to the appellant intermixing various issues.

9. The impugned order dealt with an important issue in a very narrow campus. It held that the action of the appellant in availing re-credit of duty paid on export goods is without support of law. The fact remains that the appellant should not have paid any

duty on such exports. The Department also should not have processed the ARE-1 applications and thereafter the rebate claims. The whole blame was sought to be placed on the erroneous action of the appellant. Admittedly, if the credits on the inputs were rightly taken by the appellant, the same cannot be taken out of their books simply on the ground that the amount was debited by them on export of goods under claim for rebate. The credit on inputs available in the books of the appellant is rightly eligible for refund under Rule 5 subject to verification of quantification. It is not correct on the part of the lower authorities to deny re-credit of improperly debited credit on export of goods and at the same time reject the appellants claim under Rule 5 on the ground that there is no balance in the credit account. This actually puts the appellant in no win situation with reference to legitimately available credit on inputs and their further right to claim benefit out of the same.

10. Having considered the full facts and background, as narrated above, we find that the present impugned order cannot be legally sustained. Accordingly, we set aside the same. The matter has to go back to the Original Authority to examine all the above-mentioned issues and take a holistic view about correctness of credit initially taken by the appellant on various inputs and the benefit accruing on such inputs to be paid to the appellant in terms of applicable provisions of law, more specifically Rule 5 of Cenvat Credit Rules, 2004. As the present situation emerged because of handling of the case by the

Jurisdictional Authorities not in tune with the legal provisions, the statutory benefit available to the appellant cannot be denied on various technicalities. The Original Authority should examine all these issues and decide the case afresh. The appellant shall be given adequate opportunity to represent their case before a decision is taken. The appeal is allowed by way of remand.

(Order pronounced in open court on 07/02/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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