IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/1533/2011-EX(SM)

[Arising out of Order-in-Appeal No. 76(DKV)CE/JPR-I/2011 dated 07.03.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

C.C.E. Jaipur-I **....Applicants**

Vs.

M/s. Capital Impex Pvt. Ltd. **....Respondent**

Appearance:
Shri M.R. Sharma, DR for the Appellants
Ms. Shreya Dahiya, Advocate for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 22.03.2017

FINAL ORDER NO. 52576/2017-EX(SM)

Per V. Padmanabhan:

The appeal filed by the Revenue is against the order in appeal no. 76/2011 dated 07.03.2011, the respondent exported stainless steel utensils following the procedure under Rule 19 of the Central Excise Rules 2002. Stainless steel utensils are exempted under notification no. 10/03-CE dated 01.03.2003. After export of the goods the respondent filed refund claim under rule 5 of the Cenvat Credit Rules for refund of the accumulated cenvat credit on account of exports. The substantial part of the refund which was originally rejected by the original authority was allowed to be paid in the impugned order. Revenue is aggrieved by such order and have filed the present appeal.

2. Heard both the sides.

3. The Ld. DR submits that by insertion of sub-section 1(A) of section 5A of the Central Excise Act, 1944, w.e.f. 13.05.2005, it has been declared that wherein exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereunder has been granted, manufacture of such excisable goods shall not pay the duty on exempted goods. He submits that in view of insertion of section 1(A) of 5 A of the Act, the respondent is not required to follow the procedure under rule 19 of the Central Excise Rules and hence will not be entitled to refund under Rule 5 of the CCR 2004.

4. Ld. Advocate on behalf of the respondent submits that the issue has been decided by the Tribunal in their favour for the past period vide several final orders. She specifically referred to the case of ***CCE Vs. Capital Impex Pvt. Ltd. vide final order no. 845-846/2008 dated 24.03.2008.***

5. After hearing both sides and on perusal of the records, I find that an identical issue was before the Tribunal in the respondent's own case, whereby the Tribunal held that there is no infirmity in the order of the Commissioner (A) allowing refund under Rule 5. For the purpose of proper appreciation, the relevant portion of the Final Order no. 321-322/2008-SM(BR) dated 31.12.2007 is reproduced below:-

> *"The main contention of the Revenue is that as the goods were exempted, therefore, there is no need to follow the procedure provided under Rule 19 of the Central Excise Rules in respect of goods exported. I find that the provisions of Rule 19 of Rules are specific in respect of export goods. The respondent executed a letter of undertaking in terms of Rule 19 of the Central Excise Rules, and the same has been*

accepted by the Dy. Commissioner of Central Excise. Further, I find that as per the Board's instructions benefit of input stage rebate is available on export of finished goods whether excisable or not. For ready reference, Board's instructions are reproduced below:-
"It may be noted that in rule 19 of the said rules and in said notification, expression 'export goods' has been used. This refers to excisable goods (dutiable or exempted) as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not."

6. In view of the above, respectfully following the decision of the Tribunal in the respondent's own case vide final order dated 31.12.2007, I do not find any reason to interfere the order of the Commissioner (A). Accordingly, Revenue's appeal is rejected.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu