CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 10.04.2017

Excise Appeal No. 53158 of 2016

(Arising out of order in appeal No. 170-174(AK)CE/JPR/2016 dated 16.09.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service tax, Jaipur)

CCE& ST, Alwar — Appellant-Revenue

Vs.

M/s Continental Engines Pvt. Ltd. — Respondent-assessee

Appearance:

Sh. Dharam Singh, AR for the Revenue

Sh. Anurag Kapoor & Sh. Hemant Bajaj, Advocates for the Respondent-assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final order No.52885/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal by the department against the order in appeal No. 170-174(AK)CE/JPR/2016 dated 16.09.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur.

2. The brief facts of the case are that during the period under consideration (October 2013 to March 2015), the respondent –assessee was engaged in the manufacture and export of excisable goods i.e. automobile components falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985.

The respondent-assessee procured casting articles from M/s Continental Engines Limited to its sister concern on payment of Central Excise duty. The respondent –assessee was engaged in exporting its final products without payment of duty under bond in terms of the provisions of Rule 19 of the Central Excise Rules, 2002. Since the proportion of domestic clearances of the respondent –assessee was miniscule during the relevant period, the respondent-assessee could not utilise the cenvat credit availed by them and hence, filed refund claims in respect of such utilised Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004, but the same was denied by the Commissioner. However, the Commissioner in appeal vide order dated 16.09.2016 allowed the appeal filed by the respondent to allow the refund under Rule 5 of the Cenvat Credit Rules. Being aggrieved, department has filed the present appeal.

3. With this background, we heard Sh. Dharam Singh, ld. AR for the Revenue and Sh. Anurag Kapoor, ld. Advocate for the respondent –assessee.

4. After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***ANZ International vs. CC, Bangalore – 2008 (224) ELT 573 (Tri. Bang.)*** which was assailed before the High Court and finally before the Hon'ble Supreme Court where it was uphuld (***Commissioner vs. ANZ International – 2009 (240) ELT A16 (SC.)]*** by observing that 100% Export Oriented Unit is entitled to take cenvat credit of duty on inputs procured indigenously and when they were not in a position to utilise the same, they are entitled for benefit of refund under Rule 5 of Cenvat Credit Rules, 2004.

5. By following the above judgment (supra) we uphold the impugned order alongwith the reasons mentioned therein.

6. In the result, appeal filed by the department is dismissed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant