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

Date of Hearing/Order: 19.4.2017

Appeal No. E/1913/2011-SM

(Arising out of Order-in-Appeal No. 79(CB) CE/JPR-II/2011 dated 15.3.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s RSWM Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance

Shri Vijiyan Khongal, CS - for the appellant

Shri G.R. Singh, DRs - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53119/2017

Per Ashok K. Arya :

M/s RSWM Ltd. has filed this appeal against Order-in-Appeal No. 79/2011 dated 15.3.2011 passed by the Commissioner (Appeals), Jaipur-II.

2(i) The brief facts are that the appellant is engaged in the manufacture of cotton yarn and manmade yarn of synthetic and artificial staple fibres classifiable under Chapters 52, 54 and 55 of Central Excise Tariff. The appellant filed refund claim under Rule 5 of Cenvat Credit Rules, 2004 in respect of amount of duty paid on inputs used in the manufacture of goods i.e. yarn exported by them under a letter of undertaking (UT-I) during the month of July 2008 to September, 2008.

(ii) Revenue's reason for rejection of refund is that the goods were exported in the month of October and not during the quarter from July 2008 to Sept. 2008, which is the period for which refund has been claimed by the appellant. The impugned order states that the appellant has not fulfilled the Condition No. 4 of Notification No. 5/2006-CE(NT) dated 14.3.2006, as the export relates to future period i.e. October, 2008 and not to the quarter or the month for which claim has been filed.

3. With above background of facts, heard, ld. Counsels Shri Vijiay Khongal for the appellant and Shri G.R. Singh, for the Revenue.

4. When there is no dispute regarding the fact of export of the subject goods and had the exporter filed refund claim later for the subject goods there would have been no objection by the Revenue for granting the refund. The only objection from the Revenue in granting refund is that the goods exported are not related to the quarter or the month of the refund claim filed by the appellant.

4.1 The appellant has also submitted that date of export of goods is relevant for calculating the limitation of one year for filing the refund claims as provided under Section 11B of Central Excise Act and not the ' conditions of quarter or months' given in Notification No. 5/2006 (supra). The appellant in support has referred to the Tribunal's decisions in the cases of *Reliance Chemotex Industries Ltd. Vs. CCE, Jaipur-II* - 2016 (42) STR 105 (Tri.-Del.) and *Quality BPO Service Pvt. Ltd. Vs. CST, Ahmedabad* - 2016 (39) STR 230 (Tr.). The Tribunal in the case of *Reliance Chemotex Industries Ltd.* (supra) has observed as follows:

> "**5.** In this case, out of 70 export consignments cleared for export during July-September, 2007 period, in 11 consignments, the vessel in which the goods had been loaded sailed in October, 2007. In other cases the vessel carrying the export goods left during July, 2007-September, 2007 period. Since the refund claim has been filed on 5-5-2008, the same, in respect of all these export consignments, is within the prescribed limitation period, and, in fact, this is not the allegation of the Department. There is no allegation that the Condition 2, 4, 5 or 6 are not satisfied. Since as per the provisions of the notification, the refund of unutilised Cenvat credit is admissible in respect of - inputs or input services used in manufacture of final products, "which are cleared for export under bond or letter of undertaking", I am, *prima facie*, of the view that when refund claim has been filed in respect of the 70 consignments cleared for export during July, 2007-September, 2007, within the prescribed limitation period, and by the time the refund claim was filed, the goods had already been exported out of India, refund in respect of 11 consignments cannot be denied just because the same were physically exported in October, 2007."

4.2 Considering above discussions and observations of Tribunal quoted above, the impugned order is set aside and the appeal allowed with consequential relief, if any.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM