CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Excise Appeal No.E/53040/2014-[SM]

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/35/2004 dated 28.01.2014 passed by the Commissioner, Central Excise, Customs & Service Tax, Indore.]

M/s. Spentex Industries Ltd. ...Appellant

Vs.

C.C.E. Indore …Respondent

Appearance:
Mr. Manish Saharan, (Advocate) for the Appellant
Mr. M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.20. 01.2017
Date of Decision.19.05.2017

Final Order No. 53375/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 28.01.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service tax, Indore.

2. Brief facts of the case are that the appellant is engaged in manufacture and export of Poly Cotton Yarn, classified under the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of Central Excise duty paid on the inputs used in or

in relation to manufacture of the final product. During the disputed period, the appellant availed cenvat credit of AED (T & TA) on the raw material procured by it. Since the final product manufactured by it does not attract AED (T & TA), the appellant was not in a position to utilize the cenvat credit for payment of such duty on the final product. Thus, the appellant had filed the refund application, claiming refund of AED (T & TA) paid by it. The refund application was rejected by the original authority on the ground that the appellant had not fulfilled the conditions prescribed in the Notification No. 5/2006/CE (NT) dated 14.03.2006. The adjudicating authority had also rejected the refund claim on the ground that the claim application was filed by the appellant after gap of 8 years, which is beyond the time limit prescribed in Section 11B of the Central Excise Act, 1944. On appeal, the ld. Commissioner (Appeals) has upheld rejection of refund claim.

3. The ld. Advocate appearing for the appellant submitted that cenvat credit is not to be equated with duty of excise and as such, the provisions of Section 11B *ibid* will not have any application for claiming refund of accumulated cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004. To support such stand, the ld. Advocate has relied on the judgements delivered by the Hon'ble High Courts in the case of Swagat Synthetics Vs. Commissioner of Central Excise & Customs, Surat-I reported in 2008 (232) E.L.T 413 (Guj.), STI India Ltd. Vs. Commissioner of Customs & Central Excise, Indore, reported in 2010 (19) S.T.R. 614 (M.P.) and

mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Banglore reported in 2012 (27) S.T.R. 134 (Kar.).

4. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order and futher relied on the judgment of Hon'ble Madras High Court in the case of GTN Engineering (I) Ltd. Reported in 2012 (281) E.L.T 185 (Mad.) to state that the notification dated 14.03.2016 read with Rule 5 *ibid,* makes the position clear that Section 11B *ibid is* applicable for the purpose of computation of limitation period for claiming refund of accumulated cenvat credit. Thus, he submitted that since the refund claim was filed beyond one year from the relevant date, the same is clearly barred by limitation of time.

5. Heard both sides an examined the case records.

6. The issue involved in this appeal for consideration by the Tribunal is, as to whether, the time limit prescribed in Section 11B *ibid* would be applicable for refund of accumulated cenvat credit under Rules 5 *ibid.*

7. The provisions governing refund of Cenvat credit of service tax paid on the input services, used for exportation of the manufactured goods are contained in Rule 5 ibid. The said rule provides that even though export of goods does not attract payment of Central Excise duty, yet the manufacturer is permitted to utilize the Cenvat credit attributable to the input services towards payment of Central Excise duty on any final products cleared for home consumption or for export on payment of duty.

However, for any reason, where such adjustment is not possible, the said rule mandates that the manufacturer shall be allowed for refund of such amount, subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by issuance of notification.

8. In exercise of the powers conferred by Rule 5 of the Rules, the Central Government vide Notification No. 5/2006-C.E. (N.T.) dated 14.3.2006 has prescribed the conditions/limitations for claiming refund of service tax by a manufacturer. In Appendix No. 6 of the said notification, it has been provided that refund application in Form A is to be filed with the jurisdictional Central Excise authorities before the expiry of period specified in Section 11B of the Central Excise Act, 1944 (1 of 1944).

9. Since the notification dated 14.03.2006 clearly prescribes that for claiming refund of cenvat credit, the application has to be filed within the stipulated time prescribed under Section 11B, the refund claim in this case filed beyond such specified time limit is barred by limitation of time. The hon'ble Madras High Court in the case of GNT Engineering (I) Ltd. (supra) have held that for filing of refund application, the applicant has to satisfy the limitation clause provided under Section 11B *ibid*.

10. The facts in the case of M/s mPortal India (supra) is different from the facts of the present case, in as much as, the issue in the said decided case is not in context with the time limit prescribed in notification dated 14.03.2006, providing the

embargo for filing the refund claim within one year from the relevant date. Contrary is the situation in the case in hand, where the issue is entirely confined to the applicability of the time limit prescribed in the said notification read with the provisions of Section 11B of the Act, for claiming refund of unutilized Cenvat credit on account of exportation of goods. Hence, the judgment of Hon'ble Karnataka High Court in the case of mPortal India (supra), cited by the ld. Advocate is distinguishable from the present case. Rather, the case of the appellant is directly covered by the judgment of Hon'ble Madras High Court in the case of GTN Engineering (supra).

11. The judgement of Hon’ble Gujrat High Court in the case of Swagat Synthetics (supra) and judgement of the Hon’ble High Court in the case of STI India Ltd. (supra) relied on by the ld. Advocate for the appellant has been distinguished by the Hon’ble Madras High Court in the case of GTN Engineering (I) Ltd (Supra). Relevant paragraphs in the said judgement are extracted here in below:

> *16. The learned counsel for the respondent would rely upon a judgment of the Gujarat High Court reported in 2008 (232) E.L.T. 413 (Guj.) [Commissioner of Central Excise and Customs, Surat-I v. Swagat Synthetics]. That was a case relating to sub-rule (13) of Rule 57F of Central Excise Rules, 1944, which reads as under :*

"(13) Where any inputs are used in the final products which are cleared for export under bond or used in the intermediate products cleared for export in according with sub-rule (4), the credit of specified duty in respect of the inputs so used shall be allowed to be utilised by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette."

The said rule does not prescribe any time-limit. In the absence of such prescription as to the limitation, the Gujarat High Court has held that the claim of refund could not be rejected on the ground of limitation.

17. The learned counsel would also rely upon a Judgment of Madhya Pradesh High Court at Indore reported in 2009 (236) E.L.T. 248 (M.P.) [STI India Ltd. v. Commissioner of Customs and Central Excise, Indore]. In that case, though the Court has held that Clause 6 of Appendix read with Section 11B of Central Excise Act, 1944, cannot be made applicable insofar as the period of limitation is concerned when *a claim for CENVAT credit is made, a reading of the said provision shows that there is no reference to Rule 5. With great respect, we are not in agreement with the said judgment as the judgment was rendered based on the rules and the notification which are procedural in nature. As we have found that but for the provision of Rule 5 r/w notification, the respondent could not have filed the application for refund, he has to satisfy the limitation clause as provided under Section 11B of the Act."*

12. In view of the above position of law, I do not find any infirmity in the impugned order in rejecting the refund application of the appellant on the ground of limitation. Accordingly, the appeal filed by the appellant is dismissed.

(Pronounced in the open court on 19.05.2017)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi