

West Block No.2, R.K.Puram, New Delhi

Date of hearing: 25.08.2017

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/28/12 dated 30.01.2012, passed by the Commissioner of Central Excise, Indore]

Vs.

C.C.E. Indore ... Respondent

Present Shri Manish Saharan, Advocate for the appellant
Present Shri Ubhav Sengraj, DR for the respondent

FINAL ORDER No. 56838/2017

The cenvat credit availed by the appellant sought to be denied on the premises that the appellant is manufacturing exempted goods which is ultimately been export. Therefore, they are not entitled for refund claim under rule 5 of the Cenvat Credit Rules.

2. The brief facts of the case are that the appellant is manufacturing exempted goods which are ultimately exported, therefore, the appellant filed refund claim of the Cenvat Credit available on inputs used in manufacturing of these exempted goods. The refund claim sought to be denied on the premises

that as appellant is manufacturing exempted goods, therefore, they are not entitled to Cenvat Credit on input. Therefore, question of refund under Rule 5 does not arise. Aggrieved from the said order, appellant is before me.

3. Heard the parties and considered the submission.

4. After considering the fact that the said issue came up before the Hon'ble High Court of Himachal Pradesh in the case of ***CCE Chandigarh Vs. Drish Shoes Ltd. 2010-TIOL-350-HC-HP-CX*** wherein it has been held that goods exported by the appellant are exempted goods and on input used in manufacturing of these exempted goods, the appellant is entitled to avail Cenvat Credit. When the cenvat credit is available, therefore, unutilized Cenvat credit is to be refunded to the appellant in terms of Rule 5 of the Cenvat Credit rules.

5. Therefore, relying on the decision in the case of ***Drish Shoes Ltd. (Supra)***, I hold that appellant is entitled for refund claim. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Judicial Member