CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 18.09.2017
Date of Pronouncement:_ 26.10.2017

Appeal No. E/54135/2015-EX[DB]

[Arising out of the Order-in-Appeal No. 08/Commissioner/HAPUD/2015 dated 14.08.2015, passed by the Commissioner of Central Excise, Meerut]

M/s Amul Auto Components Ltd. … Appellant

Vs.

C.C.E. Meerut-II ... Respondent

Appearance:

Present Shri Paresh Sheth, Advocate for the appellant
Present Shri H.C. Saini, DR for the respondent

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

FINAL ORDER No. 57375/2017

Per V. Padmanabhan:

The appeal is filed against the Order-in-Appeal no. 08/2015 dated 14.08.2015.

2. The appellant is a manufacturer of parts and components of automobiles. During the period under dispute i.e. July 2013 to April 2014, the appellant was availing area based exemption under notification no. 50/2003-CE dated 10.06.2003. In response to an export order, the appellant opted to procure inputs required for the manufacture of export products without

payment of duty in terms of notification no. 47/95. However, before the receipt of such permission, they procured the inputs on payment of duty, manufactured their finished products and exported the same also on payment of central excise duty. The Department was of the view that since the appellant was availing area based exemption under notification 50/2003, it was not open to the appellant to pay duty on their finished products cleared for export. Accordingly, the Department denied Cenvat Credit of the duty paid on the inputs and proceeded to recover the same through the impugned order. Penalty also has been imposed in addition to duty demand of Rs.52,83,900/- along with interest. Aggrieved by the impugned order the present appeal has been filed.

3. With the above background we have heard Shri Paresh Sheth, Advocate for the appellant and Shri H.C. Saini, DR for the respondent.

4. The Ld. Counsel for the appellant submitted that even though they were availing area based exemption, they paid duty on the goods which were exported. Consequently, they will be entitled to Cenvat Credit in respect of those inputs which were used for the manufacture of such export good. Referring to Rule 6 of the Cenvat Credit Rules 2004, he argued that Sub Rule 6 of Rule 6 mentions clearly that in respect of goods cleared for export, the provisions of sub rules 1 to 4 shall not be applicable. Accordingly, he submitted that the bar in availing Cenvat Credit of inputs in the case of exempted final products cannot be

invoked against them as long as the final products were exported.

5. The Ld. Counsel also submitted in response to a query from the bench that the Department did not allow the rebate on the terminal excise duty paid on the export goods and hence the appellant will be entitled to at least the credit of the duty paid on the inputs.

6. The Ld. DR for the Revenue justified the impugned order. He argued that the appellant is enjoying area based exemption for all their finished products and are not required to pay excise duty. Consequently, they are not entitled to take Cenvat Credit of any excise duty paid on their inputs.

7. After hearing both the sides and perusal of the record, we note that the appellant enjoys full exemption from payment of duty vide notification no. 50/2003. In spite of such exemption, they procured inputs on payment of duty, availed Cenvat Credit and paid duty on the finished products which were cleared for export. The controversy in the present case is that the Department is of the view that no Cenvat Credit can be allowed as long as the finished products are fully exempt, notwithstanding the fact that the finished products manufactured out of the duty paid inputs have been cleared for export on payment of duty. As per the general scheme of Cenvat Credit Rules, Rule 6 specifies that Cenvat Credit shall not be allowed on inputs which are used in or in relation to the manufacture of exempted goods. The Rule also provides for circumstances when

inputs are used for the manufacture of both exempted and dutiable final products / output service. Rule 6(6) specifies that such restriction shall not be applicable in a few cases including clearance for export under bond. The claim of the appellant is that they should be allowed the Cenvat Credit even though the goods have been exported on payment of duty and not under bond. Such claim has been denied by the adjudicating authority. We find that the present controversy can be decided even without resolving the larger question as to whether the appellant is entitled to Cenvat Credit on inputs used for finished products which are exported. The appellant has procured the inputs on payment of duty and has availed Cenvat Credit thereon. However, it is not in dispute that finished products have been cleared for export for payment of duty. In the process of payment of duty the Cenvat Credit availed on inputs already stands paid back. Accordingly, there is no justification for demanding repayment of Cenvat Credit all over again by taking the view that the credit availed was irregular.

8. In view of the above discussions, we find no merit in the impugned order which is set aside and appeal is allowed.

[Order Pronounced in the open court on **26.10.2017**]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu