E/190/2012-Ex(DB);
E/56943/2013

IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 18.01.2018
Date of Pronouncement: 23.01.2018

Appeal No. E/190/2012-Ex(DB) and E/56943/2013

[Arising out of Order-in-Appeal No. 281(DKB) CE/JPR-I/2011 dated 20.10.2011 for Appeal No. E/190/2012-Ex(DB), and Order-in-Appeal No. 05 (RDN) CE/JPR-I/2013 dated 10.01.2013 passed by the Commissioner (Appeals) of Central Excise, Jaipur]

M/s. Natural Slate and Sandstone Exports(P) Ltd.;
M/s. Mehta Stone Export House Appellants

Vs.

CCE-Jaipur Respondent

Appearance:

Rep by Ms. Surbhi Sinha, Advocate for the appellant.
Rep by Shri H. Saini, DR for the respondent.

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

Final Order No. 50295-50296/2018

Per V. Padmanabhan:

These appeals are filed against various Orders-in-Appeal No. 281/2011 dated 20.10.2011 as well as 5/2013 dated 10.01.2013. The issues involved in both the cases are identical and hence, these are being disposed by this common order for convenience. Both the appellants are 100% E.O.U.s and engaged in the manufacture and export of natural slate and sandstone. They availed Cenvat credit and on account of exports made, were not in a position to utilize the accumulated Cenvat credit. Hence, they filed refund claims for refund of unutilized Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004. A part of the claim in respect of both appellants stand rejected by the authorities below for the reason that the claims have been filed beyond the period of one year prescribed in Section 11B of the Central Excise Act, 1944. Aggrieved by the impugned orders, the present appeals have been filed.

2. With the above background, we heard Ms. Surbhi Sinha learned advocate representing the appellants as well as Shri H. Saini, D.R. representing Revenue.

3. The learned advocate submitted that the refund claims filed under Rule 5 of the Cenvat Credit Rules have been wrongly rejected on the ground of time bar. It is a settled position of law that the limitation under Section 11B does not apply for refund of accumulated Cenvat credit. In this connection, she relied on the following case laws:

i) mPortal India Wireless Solutions P. Ltd. vs. CST, Bangalore – *Citation No. 2012 (27) S.T.R. 134 (Kar.)*

ii) Deepak Spinners Ltd. vs. CCE, Indore – *Citation No. 2014 (302) E.L.T. 132 (Tri. – Del.)*

iii) Commissioner of C. Ex. & Customs, Surat-I vs. Swagat Synthetics – *Citation No. 2008 (232) E.L.T. 413 (Guj.)*

4. Learned D.R. justified the impugned orders. He submitted that the procedure to be followed for claim in refund under Rule 5 has been spelt out in Notification No. 11/2002-C.E. (N.T.) dated 01.03.2002. The notification has prescribed that time limit as per Section 11B will be

applicable. Hence, the rejection of refund claims on time bar may be upheld.

5. We have heard both sides and perused the records. For seeking cash refund of Cenvat credit under Rule 5, the procedure is prescribed by Notification No. 11/2002. Even though the notification has made Section 11B applicable, we note that the refund in terms of Rule 5 is different from a claim for rebate on duty paid on excisable goods exported out of India. Refund under Rule 5 is for refund of Cenvat credit accumulated due to export of goods under bond. This refund depends not only upon the accumulated Cenvat credit due to exports, but also the inability of the manufacturer to use it for payment of duty of domestic clearances.

6. It has been held by the Honorable High Court of Karnataka in the case of mPortal India Wireless Solutions P. Ltd. vs. CST, Bangalore (supra) that the limitations under Section 11B does not apply for refund of accumulation of Cenvat credit. The Honorable High Court observed as follows:

> *"6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly, insofar as refund of Cenvat credit is*

concerned, the limitation under Section 11B does not apply for refund an accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee."

7. Similar views have been taken by the Honorable Gujrat High Court in the case of Commissioner of C. Ex. & Customs, Surat-I vs. Swagat Synthetics (supra) by following the decision cited as above. We come to the conclusion that the appellants will be eligible for refund as claimed by them, if otherwise eligible without being hit by the limitations under Section 11B. In the result, both the impugned orders are set aside and the appeals are allowed.

[Pronounced in Open Court on 23.01.2018]

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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