CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 07.08.2018

Ex. Appeal Nos. 58728 - 58729 of 2013-SM
(Arising out of order-in-appeal No. 104 to 105/CE/D-II/13 dated 03.05.2013 passed by the Commissioner of Central Excise (Appeals), Delhi-II)

M/s Tricolite Electrical Industries Limited Appellant

Vs.

CCE, New Delhi Respondent

Appearance:

Sh. R. M. Saxena, Advocate for the appellant
Sh. P. Juneja, AR for the Respondent

Coram:

Hon'ble Sh. Ashok Jindal, Member (Judicial)

Final Order Nos. 52744 – 52745/2018

Per: **Ashok Jindal**:

The appellant filed these appeals against the impugned order wherein the refund claim filed under Rule 5 of the Central Excise Rules, 2004 was rejected.

2. The facts of the case are that the appellant are engaged in the manufacture of electrical switches and appliances and availing cenvat credit on inputs and clearing the same on payment of duty in DTA and in some cases cleared to SEZ units and in some cases goods were cleared to Delhi Metro Rail Corporation (DMRC) without payment of duty. As the goods cleared to DMRC and SEZ units are exempt from payment of duty, therefore, the cenvat credit availed by the appellant on inputs accumulated in

their cenvat credit account which was lying unutilised. The appellant filed refund of the amount lying unutilised in their cenvat credit account. Initially, the refund claims were sanctioned by the adjudicating authority but on appeal before the ld. Commissioner rejected the cenvat credit under Rule 5 of the Central Excise Rules, 2004. Against those orders, appellant is before me.

2. Heard the parties considered the submissions.

3. I find that in the case of ***Sirmaxo Chemicals Pvt. Ltd. vs. CCE, Thane-II – 2016 (337) ELT 425 (Tri. Mum.)*** wherein it has been held that clearances made to SEZ unit is deemed export. As the clearances made to the SEZ are deemed units, in that circumstances, the facts of that case are applicable to the facts of the present case. Admittedly, due to the clearances made to SEZ unit, the cenvat credit accumulated in their cenvat credit account and remained unutlised. Therefore, under Rule 5 of the Cenvat Credit Rules, 2004 the appellant is entitled to claim refund of cenvat credit remained unutilised in their cenvat credit account. Accordingly, the same is set aside. I do not find any merit in the impugned order and the order of the original adjudicating authority is affirmed.

4. With these terms, appeals are disposed of as above.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant