IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT – IV

Service Tax Appeal Nos.
ST/52143, 52144 & 52145/2018 [SM]

[Arising out of a common Order-in-Appeal No. 37 to 39 (NG) ST/JPR/2018 dated 16.02.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

Vaibhav Global Ltd. **...Appellant**

Vs.

CGST & CE, Jaipur **... Respondent**

Present for the Appellant : Mr. Sanjiv Agarwal &
Mr. MB Maheshwari, Advocates

Present for the Respondent: Mr. P.R. Gupta, DR

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 16.11.2018
Pronounced on : 04.12.2018

FINAL ORDER NO. 53352-53354/2018

PER: RACHNA GUPTA

Three of the above mentioned Appeals are disposed of vide this Order as the Commissioner(Appeals) has passed a common Order with respect to three Show Cause Notices in three of these Appeals. Common Order dated 16.02.2018 has been challenged before this Tribunal.

2. Relevant facts for the purpose are:

The appellant herein is engaged in manufacturing and export of gems and jewellery. He had filed a refund claim under Rule 5 of Cenvat Credit Rules, 2000 and Notification No.

27/2012-CE dated 18.06.2012 in respect of the cenvat credit taken on the inputs services used in the manufacture of the finished goods which were subsequently exported by the appellant. The Department on scrutinizing of refund claim documents found that the appellant is engaged in manufacture of an excisable goods i.e. gems and jewellery falling under Chapter 71 of the first Schedule to the Central Excise Tariff Act, 1985 and cleared the same for DTA as well as exported the goods out of the country. However, the goods being exempted under Notification No. 12 of 17.03.2012, the appellant is denied eligibility to avail cenvat credit on input services due to being exclusively used for exempted goods as per Rule 6(1) of CCR, 2004. Resultantly, respective Show Cause Notices proposing the rejection of the refund claim was issued. The said proposal was confirmed by the original Adjudicating Authority. The 3 separate Appeals arising there from have been adjudicated by the common order i.e. the one under challenge. The details of the Show Cause Notices are as follows:-

Appeal No.	**SCN**	**Period**	**Refund amount & date**	**Ex-parte OIO No./ Date**	**Common OIA No./ Date**
ST/52143/2018	C.No. V(71)R-5/Ref/246/2015/5603 dated 10.12.2015	July 2014 to September 2014	Rs. 5,14,709/- 30.09.2015	380/Ref./2015 dated 31.12.2015	37 to 39 (NG) ST/JPR/2018 dated 16.02.2018
ST/52144/2018	C.No. V(71)R-5/Ref/261/2015/5601 dated 10.12.2015	October 2014 to December 2014	Rs. 4,97,807/-	08/Ref./2016 dated 05.01.2016	37 to 39 (NG) ST/JPR/2018 dated 16.02.2018
ST/52145/2018	C.No. V(71)R-5/Ref/307/2015/5827 dated 21.12.2015	January 2015 to March 2015	Rs. 1,11,374/-	09/Ref./2016 dated 11.01.2016	37 to 39 (NG) ST/JPR/2018 dated 16.02.2018

3. I have heard Mr. Himanshu Bansal, Ld. Advocate for the appellant and Mr. P.R. Gupta, Ld. DR for the Department.

4. It is submitted on behalf of the appellant that the refund claim was filed of accumulated cenvat on inputs/ input services used for export under Rule 5 of CCR, 2004 read with Notification No. 27 dated 18.06.2012. The Department while rejecting the claim has wrongly considered the goods of the appellant as being excisable goods and that the appellant was not registered as the manufacturer thereof. Rule 6(1) and Rule 7 of CCR, 2004 has also wrongly been applied while rejecting the Appeal.

4.1 It is further submitted that being a manufacturer the services in question filed by appellant are eligible to be the input services for the purpose of cenvat credit availment and such credit can be utilized for payment of duty of other products. If this is not possible for any reason the assesse is entitled to get refund under Rule 5 of CCR, 2004 which does not provide any condition or pre-requisite that a person who exports taxable goods or taxable services to claim refund of cenvat credit paid on input services or the input. Ld. Counsel has further relied upon CBEC Circular No. 278/112/96-CK dated 11.12.1996 providing that the goods cleared for export without payment of duty are not exempted goods. Thus, the goods of the appellants may be excluded from the scope of

exempted goods and may be made eligible to the refund claim under Rule 5 read with Rule 7 of CCr, 2004.

4.2 Ld. Counsel has also mentioned that as per the definition of exempted goods in Rule 2(d) of CCR, 2004 those goods which are under entry no. 67 and 128 of Notification No. 12 dated 17.03.2012 (as has been relied upon by the Commissioner(Appeals) by the Adjudicating Authorities below) but the goods of the appellant fall under none of those categories for this reason also the goods cannot be held as exempted goods and the claim cannot be rejected in accordance thereof.

The Order under challenge is therefore prayed to be set aside; Appeal is prayed to be allowed.

5. Ld. DR on the other hand has justified the order and prayed for the dismissal of Appeal.

6. After hearing both the parities my observations and opinion is as follows:-

The appellant had filed the refund claim under Rule 5 of Cenvat Credit Rules, 2004 and Notification No. 27 dated 18.06.2012 in respect of the cenvat credit taken by them on the input services used in manufacture of finished goods which were subsequently exported by them. The 3 of the refund claims have been rejected mainly on the ground that the goods of appellant are excisable however exempted from Central Excise duty vide Notification No. 12 dated 17.03.2012 and they were not registered as manufacturer of excisable goods with

Central Excise Department. Due to the same reason the credit of the service tax attributable to service used in one unit was denied to be distributed. Since the refund claim was filed under Rule 5 of CCR it is observed that following 4 conditions are required to be fulfilled:-

(i) One manufacturer/service provider.

(ii) Clearance of final product or intermediary product/ provision of due to services.

(iii) Under bond or letter of undertaking/ without payment of service tax

(iv) Refund shall be allowed of cenvat credit

7. Resultantly, any manufacturer who clears a final product or an intermediary product for export is entitled for credit subject to above conditions. The appellant in the present case admittedly is engaged in clearing excisable goods however the controversy is whether the goods i.e. gems and jewellery were fully exempted or not. The appellant has drawn attention to the Ministry of Law advice dated 29.10.1974 as circulated vide CBEC Circular No. 278/112/96-CX dated 11.12.1996 which reads as follows:-

Under Central Excise, "exemption" means exemption by Notification No. under Section 5A of Central Excise Act, 1944 thus goods exported under bonds are not exempted from duty. A conjoint reading of this Circular with the above requirements of Rule 5 makes it clear that a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking which is exported

without payment of service tax shall not be an exempted goods and as such shall be allowed refund of cenvat crdit in view of Rule 5of Cenvat Credit Rules. I draw my support from the decision of this Tribunal in the case **reliance Industries Ltd. Vs. C.C.E. 1999(112) ELT 653** and also from the decision **CCE Vs. Omkar Textile Mills 2000 (122) ELT 115**. Notification No. 12 of 17.03.2012 is therefore not applicable in the case of export of excisable goods.

8. Now coming to the allegation of the appellant not being registered for manufacture of excisable goods, I observe that Rule 3 of Cenvat Credit Rules, 2004 prescribes that cenvat credit can be taken by a manufacturer or a provider of due to service and that there is no requirement of the registration at all. This Tribunal in the case of **Wipro BPO Solutions Limited Vs. CST 2012 (34) STT 190** has held that refund of service tax paid on input services were exported.

9. The finding of the Commissioner(Appeals) mandating the registration are therefore not sustainable. Otherwise also it is admitted fact that the appellant Sitapura, Jaipur was having centralized service tax registration for two units namely M/s Vaibhav Global Ltd.(100% EOU) Sitapura, Jaipur and the other DTA unit situated at M/s Vaibhav Global Ltd. Sitapura, Jaipur. IN view of the said admission for the clearance of excisable goods for domestic area the appellant were well registered.

10. Finally coming to the allegation of non distribution of the credit. For the same reason as discussed above that the goods of the appellant are excluded from the scope of "exempted goods" Rule 7(b) of CCR, 2004 as has been relied upon by the Commissioner(Appeals) to reject the refund is not applicable. The Order rejecting 3 of the refund claims is therefore set aside. The Appeals in hand are hereby allowed.

[Pronounced in the open Court on 04.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.