CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL No. E/550/2010
*(Arising out of **Order-in-Appeal** No. 01/2010 (G) CE, dated 08.01.2010 passed by CCE & C (Appeals), Guntur)*

CCCE & ST, GUNTUR .. APPELLANT

Vs.

SRI INDRA DISTILLARY PVT. LTD. .. RESPONDENT

Appearance
Shri Pawan Kumar Agarwal, Asst.Commissioner/AR for the Appellant.

Shri B. Seetharamayya, Advocate/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 08.11.2018
Date of Decision: 21.12.2018

FINAL ORDER No. A/31595/2018

[Order per: Mr. M.V. Ravindran)

1. This appeal is filed by Revenue against Order-in-Appeal No. 01/2010 (G) CE, dated 08.01.2010.

2. Heard both sides and perused the records.

3. The relevant facts in brief are the respondent herein were registered with Central Excise Department for manufacturing of Rectified Spirit/Denatured Spirit and Fusel Oil; availed facility of CENVAT credit on inputs and capital goods; during the time the factory was not running and the appellant utilised CENVAT credit for discharge of Central Excise Duty and an amount equivalent to 8% or 10% of the value of the exempted goods, the factory was under closure and the respondent surrendered the registration to the department and filed a refund claim seeking refund of an amount lying in CENVAT credit taken on inputs. On the date of surrendering of the registration, an amount of Rs. 1,03,19,444/- shown as unutilised CENVAT credit. The adjudicating authority, after following due process of law, rejected the contention and also the refund claim, therefore an appeal was preferred before the first appellate authority. The first appellate authority, following the law settled by Hon'ble High Court of Karnataka in the case of Slovak India Trading Company Pvt. Limited vs. CCE, Bangalore [2006(201) E.L.T. 559 (Kar.)] held that the Order-in-Original is incorrect, set aside the same also recording that the judgment of Slovak India Trading Company Pvt.Ltd., of Hon'ble High Court of Karnataka was upheld by Hon'ble Apex Court as reported at [2008(223)E.L.T A170(SC)].

4. Ld. DR, after taking us to the entire proceedings, submitted that CENVAT credit for which refund has been claimed is incorrect as any refund of unutilised credit is governed by Rule 5 of CEVAT Credit Rules, 2004 and the said rule only permit for refund of unutilised CENVAT credit in respect of

the goods which are exported. It is his submission that appellant has not exported any goods. He relies upon the decision of the Larger Bench in the case of Steel Strips vs. CCE, Ludhiana [2011(269) E.L.T. 257 (Tri.-LB)] and Om Enterprises vs. CCE, Pune-II [2009(234)E.L.T. 683 (Tri.-Mumbai)] for the proposition that refund of unutilised CENVAT credit is only given by Rule 5 and may be applicable only if they are exported.

5. Ld. Counsel appearing for the respondent submits that the same issue is decided Hon'ble High Court of Karnataka in the case of Slovak India Trading Company Pvt.Ltd. and by Hon'ble High Court of Rajasthan in the case of Welcure Drugs & Pharmaceuticals Limited vs. CCE, Jaipur [2018(15) G.S.T.L. 257 (Raj.)] which reiterates the law as profounded by Slovak India Trading Company Pvt. Limited and upheld by Hon'ble Apex Court. He produces copies of the judgment.

6. On careful consideration of the submissions made, we find that there is no dispute as to the fact that respondent availed CENVAT credit facility on inputs and capital goods, utilised the same for payment of duty on clearance of dutiable goods and also making debits on clearance of exempted goods. It is also undisputed that the respondent had surrendered the registration to the Department and subsequently filed refund claim for unutilised CENVAT credit.

7. We find that identical issue came up before Hon'ble High Court of Rajasthan in the case of Welcure Drugs & Pharmaceuticals Limited (supra) wherein their Lordships after analysing all the decisions on the issue and considering the provisions of Rule 5 of CENVAT credit Rules 2004, held as under:

> ***"10.*** *Before proceeding with the matter, it will not be out of place to reproduce Rule 5 of the Central Excise Act which reads as under :*
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> *"**Rule 5. Refund of CENVAT credit.** - Where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification :*
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> *Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty."*
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> ***11.*** *In our considered opinion, in view of the observations made by the Karnataka High Court in Slovak India Trading Co.'s case (supra) and also in Collector of Central Excise, Pune's case (supra) by the Supreme Court, which reads as under :*
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> *17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment*

of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

18. It is therefore, that in the case of Eicher Motors Ltd. v. Union of India - [1999 (106) E.L.T. 3] this Court said that a credit under the Modvat scheme was "as good as paid".

12. *Four different High Courts have also taken the view against which the SLP was preferred and earlier also the Tribunal granted refund against which the SLP was not preferred. In that view of the matter, the principle of estoppel applies as once the department has accepted the view taken by the Tribunal it will not be appropriate to challenge the same by choosing the present assessee.*

13. *In our considered opinion, the judicial discipline is required to be maintained. The Tribunal cannot distinguish the High Court judgments. They are bound by the High Court judgments even jurisdictional High Court and at the most they can refer it back prior to distinguish on facts but no authority has been made. Full Bench decision of the Tribunal has to be followed.*

14. *Hence, we answer the issue in favour of assessee against the department.*

> ***15.*** *The appeal is allowed. The view of Karnataka High Court which has been confirmed by the Supreme Court is required to be approved and the same is approved."*

8. It can be seen from the above reproduced judgment, the issue is now squarely covered in favour of the respondent herein.

9. Reliance placed by Ld. DR on the Larger Bench decision of Steel Strips vs. CCE, LUDHIANA [2011(269)ELT 257 (Tri.-LB)] may not carry the case of the Revenue any further as the issue is covered by Hon'ble High Court of Rajasthan in the case of Welcure Drugs & Pharmaceuticals Limited (supra).

10. In view of the foregoing, the appeal stands rejected and the Order-in-Appeal is upheld.

(Pronounced in open Court on 21.12.2018)

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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