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Appeals No. ST/1950/2010  
ST/1961/2010,  
ST/1951/2010, ST/1952/2010

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court - I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
ST/1950/2010	CCE&ST, Tirupathi	Obulapuram Mining Company Ltd.	O-I-A No. 17/2010 (T)ST, dt. 25.05.2010 passed by CCE, C&ST (Appeals), Guntur
ST/1961/2010	Obulapuram Mining Company Ltd.	CCE&ST, Tirupathi.	.do.
ST/1951/2010	CCE&ST, Tirupathi	Obulapuram Mining Company Ltd.	O-I-A No. 18/2010 (T)ST, dt. 25.05.2010 passed by CCE, C&ST (Appeals), Guntur
ST/1952/2010	.DO.	.do.	O-I-A No. 19/2010 (T)ST, dt. 25.05.2010 passed by CCE, C&ST (Appals), Guntur

**Appearance**

Shri B.G. Chidananda Urs, Advocate for the Appellant.

Shri C. Mallikharjun Reddy, Superintendent for the Respondent.

**Coram:**

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

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

Date of Hearing: 19.12.2018  
Date of Decision: 19.12.2018

**FINAL ORDER No. A/31632 - 31635/2018**

[Order per: Mr. P.V. Subba Rao)

1. These four appeals deal with the same issue and hence are being disposed of together. Assessee and Revenue filed appeal No. ST/1961/2010 and ST/1950/2010 respectively against Orders-in-Appeal No. 17/2010 (T)ST, dt. 25.05.2010. Appeal No. ST/1951/2010 is filed by

Revenue against O-I-A No. 18/2010 (T)ST, dt. 25.05.2010 and appeal No. ST/1952/2010 is filed by Revenue against O-I-A No. 19/2010 (T)ST, dt. 25.05.2010.

2. Heard both sides and perused the records.

3. In In appeal No. ST/1950/2010 and appeal No. ST/1961/2010, assessee preferred refund claims under notification NO. 41/2007-ST, dated 17.08.2007 which were rejected by the adjudicating authority on the ground that they have not fulfilled the conditions of the said Notification No. 41/2007. Aggrieved, the respondent preferred an appeal before the first appellate authority, who, vide impugned order, sanctioned some portion of the refund, holding that the appellant being a manufacturer and exporter of goods, is entitled to get refund under Rule 5 of CENVAT Credit Rules, 2004 and the same should be considered. He also rejected some claim on the ground that the refund claim was filed beyond 60 days from the date of export, as laid down in Notification No. 41/2007-ST. Ld. Counsel submits that the impugned order is contradictory as the first appellate authority held that they were eligible for refund under Rule 5 of CCR 2004 for some amount and sanctioned the same, whereas he rejected the sanction of some amount without considering this aspect. In appeals No. ST/1951/2010 and ST/1952/2010, the First Appellate Authority allowed the appeals on the same issue and Revenue is in appeal against these orders.

4. Ld. DR reiterates the findings of the lower authority and asserts that the first appellate authority has wrongly sanctioned some amount of the refund in the case of Appeal No. ST/1950/2010 while in Appeal Nos. ST/1951/2010 and ST/1952/2010, they have wrongly sanctioned the full refund.

5. After hearing both sides, we find that an identical issue of the same assessee was before this Bench in Appeal No. ST/904/2010, which was decided by Final Order No. 30946/2017, remanding the matter back to the adjudicating authority to consider the alternative prayer of the appellant that they are entitled to get refund under Rule 5 of CCR 2004. Para 7 of this final order is reproduced below-

*“7. On careful consideration, we find that the appellant had in fact raised an alternative prayer to the lower authorities that they can avail Cenvat Credit of the service tax liability of GTA services paid by them, under Cenvat Credit Rules 2004 and they are eligible for refund under Rule 5 of Cenvat Credit Rules. This alternative prayer has not been properly addressed by the lower authorities is a fact. In our considered view, lower authorities should be given an opportunity to consider this prayer in its correct perspective and come to the appropriate conclusion. Accordingly, without expressing any opinion on the merits of the case, the impugned order is set aside and remand the matter back to the adjudicating authority to reconsider the issue afresh, after following principles of natural justice. Appellant is at liberty to produce evidences in support of their claim, before the lower authority, which should be considered in its proper perspective.”*

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6. We find no reason to take a different view in these four appeals, when an identical issue in respect of the very same assessee in this case was remitted to the adjudicating authority.

7. All four appeals are disposed of setting aside the impugned orders and remanding the matter to the adjudicating authority to consider the alternative prayer of the assessee that they are entitled to the refund under Rule 5 of CCR 2004 and decide the matter after following the principles of natural justice.

*(Operative portion of the order pronounced in open court on conclusion of hearing)*

(P.VENKATA SUBBA RAO)  
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)  
MEMBER (JUDICIAL)

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