CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT - I

Central Excise Appeal No. 30578 of 2019

(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-161-18-19 dated 26.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

M/s Andhra Pradesh (Granite) Midwest Pvt Ltd — **Appellant**
Chimakurthy
Prakasam Distt
A.P. 523226

Versus

The Commissioner of Central Tax Guntur-GST, — **Respondent**
C.R. Buildings, Kannavarithota,
Guntur-522004

WITH

Central Excise Appeal No. 30579 of 2019

(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-155-18-19 dated 25.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

Midwest Granite Pvt Ltd — **Appellant**
Chimakurthy
Prakasam Distt
A.P. 523226

Versus

The Commissioner of Central Tax Guntur-GST, — **Respondent**
C.R. Buildings, Kannavarithota,
Guntur-522004

WITH

Central Excise Appeal No. 30583 of 2019

(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-156-18-19 dated 25.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

Midwest Granite Pvt Ltd — **Appellant**
Chimakurthy
Prakasam Distt
Andhra Pradesh

Versus

The Commissioner of Customs & Central Tax **Respondent**
Nellore Commissionerate,
Nellore.

WITH

Central Excise Appeal No. 30024 of 2020
(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-163-18-19 dated 26.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

Midwest Granite Pvt Ltd **Appellant**
Chimakurthy
Prakasam Distt
A.P. 523226

Versus

The Commissioner of Central Tax **Respondent**
Guntur-GST,
C.R. Buildings, Kannavarithota,
Guntur-522004

WITH

Central Excise Appeal No. 30048 of 2020
(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-154-18-19 dated 25.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

Midwest Granite Pvt Ltd **Appellant**
Chimakurthy
Prakasam Distt
A.P. 523226

Versus

The Commissioner of Central Tax **Respondent**
Guntur-GST,
C.R. Buildings, Kannavarithota,
Guntur-522004

AND

Central Excise Appeal No. 30049 of 2020
(arising out of order-in-Appeal No.GUN-EXCUS-000-APP-164-18-19 dated 26.03.2019 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

M/s Andhra Pradesh (Granite) Midwest Pvt Ltd **Appellant**
Chimakurthy
Prakasam Distt
A.P. 523226

Versus

The Commissioner of Central Tax Guntur-GST, **Respondent**
C.R. Buildings, Kannavarithota,
Guntur-522004

Appearance:

Ms Siri Reddy, Adv for the Appellant.

Mr A. Rangadham A.R. for the Respondent.

CORAM

HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

Date of Hearing: 16/12/2021

Date of Decision: 16/12/2021

FINAL ORDER NUMBER 30346-30351/2021

[ORDER PER:P. VENKATA SUBBA RAO] .

All these appeals are filed on the same issue and hence are being disposed of together. The appellant has claimed refund of CENVAT credit under Rule 5 of the CENVAT Credit Rules. As per these rules, the amount of refund admissible is equal to export turnover of goods plus export turnover of services divided by the total turnover multiplied by the net CENVAT credit. Under dispute in this case is what figure should be considered as "export turnover of goods". The lower authorities have excluded the goods which were sold to 100% EOUs by the appellant from the export turnover of goods. They have also excluded such goods which were sold to third parties who have, in turn, exported the goods. As far as the supplies to 100% EOUs is concerned, the explanation under Rule 5 (1A) was inserted which says "Export goods" means goods which are to be taken out of India to a place outside India". Since the goods supplied to 100% EOUs are not taken outside India, both sides agree that to that extent appellant was not entitled to refund of CENVAT Credit under Rule 5. As far as exports made through third party by the appellant are concerned a decision has been taken in favour of the same appellant by this Bench in Appeal No. E/30085/2018 by Final order No. A/30505/2018 dated 17/04/2018 whereby it has been held in para 5 as follows:

> 5. On due consideration of the submissions made, I find there is no dispute as to the fact that respondent cleared the goods manufactured by them for export through third party. The findings of the first appellate authority on this point are relevant which are reproduced:
>
> "5.3 As per words of value of export used in Rule 2(c), I opine that the said rule does not restrict the exports by third party exports and no specific guidelines issued for not considering third party exports turnover for computing total turnover of exports. The adjudicating authority had not given any interpretation while disallowing the third party exports turnover. Thus, the refund of accumulated CENVAT credit is to be granted in respect of all the exports and therefore the restriction of the refund claim on aforesaid ground is not tenable. The appellants quoted the following judicial decision for their reliance.
> (a) CCE Hyderabad Vs. Ravi Food Limited 2011(271)ELT 436 (Tri.-Bang.)
> (b) CCE&Cus, Nashik Vs Sipra Engineers Pvt Ltd 2007(217) ELT 239 (Tri.-Mumbai)
> (c) Meghdoot Pistons Pvt Ltd Vs. CCE Kanpur 2011(263) ELT 610 (Tri.-Del.)
>
> I perused the aforesaid case laws and observed that the above case laws relied upon by the appellants are strongly in support of their contention and are applicable to the present facts of the case.
>
> 5.4 Further, it is stated in the impugned order that as the assessee has failed to submit proof of receipt of foreign exchange in respect of third party exports, the value of third party exports have not been considered for computing export turnover. I opine that the plea of the appellant to consider value of such exports for computation of export turnover is to be allowed subject to the submission of requisite Bank

Realization Certificate."

2. Learned DR fairly submits that no appeal has been filed against this order by the Revenue. Therefore, the issue with respect to the third party exports has attained finality in the appellant's own case.

3. I find no reason to deviate from the decision already taken by this Tribunal. Further, Rule 5 requires export of goods and does not specify whether such export should be done directly or can also be done through third party. For this reason also, the appellant is entitled to refund of CENVAT credit under Rule 5 as far as the goods exported whether directly or through third parties is concerned. As far as the goods which are supplied to 100% EOUs are concerned they are not moving out of India and hence in view of the explanation to Rule 5 (1A), the appellant is not eligible for refund of Cenvat credit under Rule 5. Accordingly all appeals are disposed of as follows:

i) The appellant is not entitled to refund of CENVAT Credit under Rule 5 in respect of goods supplied to 100% EOUs

ii) The appellant is entitled to refund of CENVAT Credit under Rule 5 in respect of exports made whether directly or through third parties.

iii) All appeals are remanded to original authority for the limited purpose of calculation as above.

4. All Appeals are disposed of as above.

(Order pronounced and dictated in open court)

(P. Venkata Subba Rao)
Member(Technical)

Neela Reddy