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

Division Bench
Court – I

Excise Appeal No. 26385 of 2013

(Arising out of OIA No.159/2012 (H-I) CE dt.28.01.2013 passed by Commissioner of Central Excise, Customs & Service Tax (App-I), Hyderabad)

Commissioner of Central Tax
Medchal **......Appellant**
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

VERSUS

Techbond Laboratories (P) Ltd
Vijaya Towers, Nagarjuna Towers,
Srinagar Colony, Hyderabad – 500 073 **......Respondent**

and

Excise Appeal No. 26386 of 2013

(Arising out of OIA No.160/2012 (H-I) CE dt.28.01.2013 passed by Commissioner of Central Excise, Customs & Service Tax (App-I), Hyderabad)

Commissioner of Central Tax
Medchal **......Appellant**
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

VERSUS

Techbond Laboratories (P) Ltd
Vijaya Towers, Nagarjuna Towers,
Srinagar Colony, Hyderabad – 500 073 **......Respondent**

Appearance
Shri P. Amaresh, AR for the Appellant.
Shri R. Raghavendra Rao, Advocate for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30187-30188/2023

Date of Hearing: 14.07.2023
Date of Decision: 14.07.2023

[Order per: ANIL CHOUDHARY]

Heard the parties. We find that the issue involved in the Appeal is whether the Respondent/Assessee unit, a registered manufacturer, is eligible for refund of unutilized Cenvat credit under Rule 5 of Cenvat Credit

Rules when they cleared products to EOU after claiming the benefit of export.

2. Upon hearing the parties, we find that the issue is squarely covered in favour of the Respondent by ruling of the Hon'ble Gujarat High Court in the case of CCE vs Shilpa Copper Wire Industries [2011 (269) ELT 17 (Guj)] wherein, the Appeal was allowed by the Hon'ble High Court, having held as follows:

> *"14. We have heard the learned Counsel appearing for the parties and after considering their submissions, we are of the view that the issue raised by the Revenue in the present Tax Appeal is squarely covered by the decision of Amitex Silk Mills Pvt. Ltd. (supra), Commissioner of Central Excise v. Ginni International Ltd. and Sanghi Textiles Ltd. v. Commissioner of Customs & Central Excise - 2006 (206) E.L.T. 854 (Tri.-Bang.). So far as the decision of the Tribunal in the case of Amitex Silk Mills Pvt. Ltd. (supra) is concerned, it is true that the appeal is admitted by the Apex Court, however, no stay was granted by the Apex Court. It is, however, more important to note that the decision of the Tribunal in the case of Ginni International Ltd. (supra) was also challenged before the Apex Court and the Apex Court vide decision reported in 2007 (215) E.L.T. A102 (S.C.) held while dismissing the Revenue's appeal against the Tribunal's order, that once Development Commissioner giving permission to the appellant, a 100% EOU, to sell goods in DTA up to a specified value, Revenue cannot go beyond the permission and dispute it holding that for fixing the limit only physical exports and not deemed exports should have been taken into account. It is also important to note that the decision of the Tribunal in the case of Sanghi Textiles Ltd. v. Commissioner of Customs & Central Excise (supra) was also challenged by the Revenue before the Apex Court and the Apex Court vide order dated 16-8-2007 dismissed the Revenue's appeal. While dismissing the said appeal, Apex Court has referred to its decision in the case of Ginni International Ltd. (supra) and reiterated that the Tribunal in its impugned order had held that once Development Commissioner giving permission to the appellant, a 100% EOU, to sell goods in DTA up to a specified value. Revenue cannot go beyond the permission and dispute it holding that for fixing the limit only physical exports and not deemed exports should have been taken into account."*

3. The said ruling of the Hon'ble High Court has been confirmed by the Hon'ble Apex Court by dismissing the Revenue's SLP vide Order dated 06.01.2011 reported at [2018 (361) ELT A84 (SC)].

4. Accordingly, we dismiss the Appeals filed by the Revenue and confirm the Impugned Order. The Appellant shall be entitled to consequential benefits in accordance with law.

5. It is pointed out by the parties that the part of the refund claim was held to be time barred by the Commissioner (Appeals) which is not being disputed by the Respondent/Assessee. In the light of the matter, the part of the refund claim held to be time barred, stands confirmed.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda