IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/88003/2017

[Arising out of Order-in-Appeal No: PK/90/MC/2017 dated 31/08/2017 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai – II.]

Osho Minerals (India) Pvt Ltd **… *Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central **…*Respondent***

<u>*Appearance*</u>*:*

None for appellant

Shri VR Reddy, Assistant Commissioner (AR) for respondent

Date of hearing	**25/04/2018**
Date of pronouncement	**25/04/2018**

<u>CORAM</u>

Hon'ble Shri Ramesh Nair, Member (Judicial)

<u>ORDER NO: A/86263 / 2018</u>

Appellant have filed refund claims under Rule 5 of CCR 2004 read with Notification No. 27/2012-CE(NT) dated 18/06/2012 for the period April 2012 to June 2012 on 28/03/21018; for July 2012 to September 2012 on 24/06/2013 and for October 2012 to December 31, 2012 on 30/09/2013. The refund claims were rejected on the ground that the appellant have not debited the amount from their

CENVAT credit account at the time of filing of the refund application. Appellant debited the said amount of 10,44,7675/- in the CENVAT credit equivalent to the refund amount on 04/07/2015. However, at the time of passing the order-in-original this amount was not reversed. Therefore, the reversal was not before the adjudicating authority.

2. The fact regarding non-reversal of the CENVAT credit was not before the adjudicating authority. Against the order of the adjudicating authority, appellant filed appeal before Commissioner (Appeals) who rejected the appeal agreeing with the findings of the adjudicating authority that the appellant should have reversed the credit at the time of filing of the application for refund. Therefore, they violated the condition prescribed in para 2(h) of the Notification 27/2012-CE(NT). Being aggrieved by the order-in-appeal the appellant filed the present appeal.

3. None appeared on behalf of appellant. However, a letter was submitted for adjournment. Since the issue lies in a narrow compass appeal is taken up for disposal.

4. Shri VR Reddy, learned Assistant Commissioner (Authorised Representative) appearing on behalf of Revenue reiterates the findings of the impugned order.

5. On a careful consideration of the submissions made by Learned

Authorised Representative and on perusal of records, I find that the refund claims were rejected only on the ground that the appellant have not reversed the refund amount which is against unutilized CENVAT credit at the time of filing the refund claim. However, the fact which is appearing in the record that the appellant have subsequently on 04/07/2015 reversed the credit. It is also on record that the CENVAT availed by the appellant impugned in the appeal, the said credit was never utilised from the date of filing of the application till the reversal. I am of the view that if the CENVAT credit is reversed without utilizing the same before sanction of the refund claim, the condition of the notification stands complied with. The only purpose of reversing CENVAT credit is because the said amount being refunded to the applicant. Therefore, at any time before sanction of the refund claim, if the CENVAT credit is reversed, the refund cannot be denied. If the appellant have reversed the CENVAT credit without utilizing, they are entitled for the refund. However, the reversal was made in July 2015 whereas the order rejecting the claim was passed prior to that date. Therefore, the facts of the said reversal was not before the adjudicating authority which needs to be verified. On verification, if the adjudicating authority finds that the appellant have reversed the credit without utilization of the same from the date of application till the date of reversal they are legally entitled to the refund.

6. Accordingly, the impugned order is set aside and the appeal is

allowed by way of remand to the adjudicating authority to pass a fresh order after verifying the facts as observed above.

(Dictated in Court)

(Ramesh Nair)
***Member (Judicial*)**

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