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

APPEAL NO: E/87174/2018

[Arising out of Order-in-Appeal No: SM/CGST & CX/Bhiwandi/App-32/17-18 dated 27.02.2018 passed by the Commissioner (Appeals), CGST & CX, Bhiwandi, Mumbai]

Rochem Separation Systems (India) Pvt Ltd — ***Appellant***

versus

The Commissioner of CGST & CX, Palghar — ***Respondent***

Appearance:

Shri Prasad Paranjape, Advocate for appellant

Shri M.R.Melvin, Superintendent (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of hearing: 14/09/2018
Date of decision: 14/09/2018

ORDER NO: A/88315 / 2018

***Per:* S.K. Mohanty**

This appeal is directed against the impugned order dated 27.02.2018 passed by the Commissioner of CGST & CX, Bhiwandi.

2. Brief facts of the case are that the appellant is engaged in the

manufacture of water purification plants, falling under Chapter heading 8421 of the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit in respect of central excise duty paid on inputs and capital goods and service tax on the input services. During the disputed period, the appellant had claimed duty exemption in respect of supply of the said final product to specified buyers, in terms of Notification No. 64/95 – C.E. (N.T.) dated 16.03.1995. Since the excisable goods manufactured by the appellant attract payment of Central Excise duty and also exempted by virtue of above notification, the case of the appellant falls under the provisions of Rule 6 of the Cenvat Credit Rules, 2004. The appellant had opted for payment of amount as provided under sub-rule 3 of Rule 6 *ibid.* Being a manufacturer of excisable goods, the appellant was required to pay amount of 6 percent of the value of exempted goods. However, due to inadvertence, instead of paying such amount, the appellant had paid an amount of 7 percent through its Cenvat account, which was payable by a service provider and not the manufacturer. Upon realization of mistake of excess payment of amount, the appellant had re-credited the said amount in the Cenvat register. Taking of *suo moto* credit by the appellant was disputed by the department on the ground that the appellant was required under the statute to file the refund application under Section 11B of the Central Excise Act, 1944 instead of taking re-credit on its own.

3. The Learned Advocate appearing for the appellant submits that

taking of re-credit is merely a technical correction/adjustment of an erroneous accounting entry passed earlier and not fresh availment of credit. Thus, he submits that the provisions of Section 11 B of the Act shall not be applicable. In this context, Learned Advocate has relied on the judgment of Hon'ble Madras High Court in the case on ICMC Corporation Ltd. Vs. CESTAT, Chennai reported in 2014 (302) ELT 45 (Mad.) and Hon'ble Allahabad High Court in the case of Krishnav Engineering Ltd. Vs. CESTAT reported in 2016 (331) ELT 391 (All.). The Learned Advocate also relied on the decision of Bangalore Bench of this Tribunal in the case of Comm. Of C.E., C. & S.T., Bangalore Vs. Stumpp, Scheule & Somappa P. Ltd., reported in 2015 (319) ELT 146 (Tri. – Bang.).

4. On the other hand, Learned AR appearing for Revenue has reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that the appellant had inadvertently reversed the amount of 7% in the Cenvat account, instead of the prescribed amount of 6% of the value of exempted goods. The process of reversal of excess Cenvat credit and taking of re-credit of the said excess amount involve only accounting/book adjustment. There was practically no outflow of fund towards this accounting adjustment. Thus, the provisions of Section 11B of the Act for refund claim will not be applicable to the case in hand. By

analyzing the statutory provisions, the Hon'ble Madras High Court in the case of ICMC Corporation Ltd (supra) have held that process involving availment of suo motu Cenvat credit of the amount reversed earlier is a technical book adjustment and in absence of outflow of funds from assessee, filing of refund claim under Section 11B of the Act does not arise. The relevant paragraphs in the said judgment are extracted herein below:

> "13. We do not subscribe to the view expressed by the Revenue. Admittedly, the assessee originally availed the Cenvat Credit on service Tax for discharging its liability. However, for sound reasons, it reversed the credit. Strictly speaking, in this process, there is only an account entry reversal and factually there is no outflow of funds from assessee to result in filing application under Section 11N of the Central Excise Act, 1944 claiming refund of duty. The contention of the revenue the even in reversal of the entry there is bound to be an unjust enrichment has no substance or based on any legal principle, sinc, what is availe off by the assessee is only a credit on the duty paid on the services rendered. Further, the assessee is entitled to take no9te of as per Rule 6(5) of the Cenvat Credit Rules, 2004. As there is no dispute of the fact that a sum of Rs.3,21,308/- available as Cenvat Credit was in respect of input services, which are given under Rule 6(5) of the Cenvat Credit Rules, 2004. When that being the case, in respect of those services specifically mentioned under Rule 6(5) of the Cenvat Credit Rules, 2004 as it existed during the relevant period viz., 2004-2006 getting the reversal of the entry is in tune with its stand taken which was accepted by the Tribunal in the earlier round of litigation.
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> 14. We do not find any good ground to hold that it was a case of refund of duly falling under Section 11B of the Central Excise Act, 1944 and that the assessee was to comply with the provisions of Section 11B of the Act. The view of the Tribunal that the assessee should seek reversal in the appropriate judicial forum, if the assessee was aggrieved by the earlier order herein does not arise at all.
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> 15. even a cursory reading of the order of the tribunal in the earlier round of litigation would show that it accepted the assessee's case of suo motu reversal of the entry. That being the case, the subsequent conduct of the assessee for a follow up action on an amount of Rs.3,21,308/-, which is only an account entry adjustment, technically speaking cannot be taken exception to either by Tribunal or for that

atter by the Revenue. For this, we do not find any need for a finding to be given in the order of the Tribunal in the earlier round of litigation.

16. We do not for a moment deny the fact that a sum of Rs.3,21,308/- for which suo motu credit was teken by the assessee was forming part of Rs.5,38,796/- which was earlier reversed by the assessee. On the admitted fact, Rs.3,21,308/- represented the enumerated input services as given under Rule 6(5) of the Cenvat Credit Rules, 2004, we have no hesitation in accepting the plea of the assessee that on a technical adjustment made, the question of unjust enrichment as a concept does not arise at all for the assessee to go by Section 11B of the Central Excise Act, 1944.

17. In the circumstances, we set aside the order of the Tribunal and allow the appeal filed by the assessee and hold that legally speaking there is no impediment in the assessee taking suo motu credit of the sum of Rs.3,21,308/-. In the light of the above, we allow the appeal."

7. In view of the above settled position of law, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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