CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.E/87778 of 2018

[Arising out of Order-in-Appeal No.PUN-CT-APPII-000-020 & 021-18-19, dt.19.04.2018, passed by the Commissioner (Appeals-III) Central Tax, Pune]

M/s Trimurti Plast Containers P. Ltd ......**Appellant**

VERSUS

C.C.T. Pune-II ......**Respondent**

Appearance:
Shri Mahesh Raichandani,Advocate for the Appellant
Shri Satish Hasija, Supdtt. (AR), Authorised Representative for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85700 / 2019

Date of Hearing: 10.04.2019
Date of Decision: 10.04.2019

PER: D.M. MISRA

Heard both sides. This is an appeal filed against Order-in-Appeal No.PUN-CT-APPII-000-020 & 021-18-19, dt.19.04.2018, passed by the Commissioner (Appeals-III) Central Tax, Pune.

2. The short issue involved in the present appeal is whether on the clearances made to 100% EOU, cash refund of accumulated CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 can be admissible for the period October 2016 to December 2017.

3. I find that on the same issue for the earlier period, this Tribunal, in the appellant's own case, vide Final Order No.A/92026/2017 dt.17.11.2017 observed as follows:-

> "5. I find that issue involved is whether the appellant is entitled for the refund under Rule 5 during the period April 2015 to June 2015. I have gone through Rule 5 amended by Notification No.6/15-CE(NT), dt.1.3.2015 according to which definition of "export goods" was amended and amended definition reads as under: "(1A) "export goods" means any goods which are to be taken out of India to a place outside India." As per the amended definition of export goods, refund is only allowed in respect of export goods, which are taken outside India. Ld. Commissioner has relied upon the sanction order of appellant which is pertaining to the period prior to 1.3.2005 therefore same is not relevant to the fact of the present case. As regard the reliance of the ld. Counsel on Board Circular dated 28.04.2005 on perusal of the same, I find that the said circular is for clearance to SEZ as regard the SEZ there is specific provision in SEZ Act itself that supplies made to SEZ is exports therefore this circular is not applicable for 100% EOU. As regards the judgments, I find that all the judgments pertains to period prior to 01.03.2015, therefore same are not applicable in the present case particularly when definition of export goods is amended. As per my above discussions, impugned order is not sustainable, same is set aside. Revenue's appeal is allowed. CO stands disposed of."

4. I do not find any reason to deviate from the said view of the Tribunal. Consequently, following the said decision, the impugned order is upheld and the appeal is dismissed.

(Dictated and pronounced in the open court)

(D.M. Misra)
Member (Judicial)

CBB