CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Excise Appeal No. 1365 of 2010

(Arising out of Order-in-Appeal No. SB/63/Th-I/10 dated 06.05.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Shree Mahabir Dyeing & Printing Mills Pvt. Ltd. — **Appellant**
F-36, MIDC, Phase-II,
Dombivli 421 203.

Vs.

Commissioner of Cen. Excise, Thane-I — **Respondent**
4th floor, Navprabhat Chambers,
Ranade Road, Dadar (W),
Mumbai 400 028.

Appearance:

Shri Kiran Chavan, Advocate for the Appellant
Shri R.K. Dwivedy, Authorised Representative for the Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86454/2019**

Date of Hearing: 22.08.2019
Date of Decision: 22.08.2019

PER: DR. D.M. MISRA

Heard both sides.

2. This is an appeal filed against order-in-appeal No. SB/63/Th-I/10 dated 06.05.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-II.

3. Briefly stated the facts of the case are that the appellant had filed refund claim of unutilized cenvat credit on exercising option to avail the benefit of exemption Notification No.30/2004-CE dated 09.07.2004. On adjudication, the refund was rejected. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who also, in turn, rejected their appeal. Hence, the present appeal.

4. The short issue involved in the appeal for determination is whether accumulated cenvat credit can be allowed as refund under Rule 5 of Cenvat Credit Rules, 2004, if the same cannot be utilized by the assessee claiming such cash refund other than by way of export. This issue has been settled by the Larger Bench of the Hon'ble Bombay High Court in the case of *Gauri Plasticulture Pvt. Ltd. vs. CCE, Indore – 2019-TIOL-1248-HC-MUM-CX-LB*. We find that their Lordships in para 29 observed as follows:-

> *"29. We do not think that by taking assistance of this provision, we will be able to hold as contended by Mr. Patil that the Cenvat Credit can be refunded even in relation to those inputs which have not been used in the manufacture of the final product or the exported goods. We are called upon to read something in the substantive rule and which is totally absent therein. When Rule 5 follows Rule 4, which is titled as "Conditions for Allowing Cenvat Credit", then, we must understand the scheme in such manner as would make the law workable and consistent. Refund of Cenvat Credit in terms of Rule 5 is permissible only when there is a clearance of a final product of a manufacturer or of an intermediate product for export without payment of duty under a bond or letter of undertaking of a service provider, who provides an output service which is exported without payment of tax and by applying the format which is carved out with effect from 1st April, 2012 by the substituted Rule 5."*

5. Following the aforesaid precedent, the impugned order is upheld and the appeal is dismissed.

(Dictated and pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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