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

Appeal No. E/87120, 87124, 87125/2018

(Arising out of Order-in-Appeal No. NSK/CEX/000/APPL/242 to 244/17-18 dated 23.02.2018 passed by Commissioner of CGST & Central Excise (Appeals), Mumbai) Nasik)

Unity Pharma Chem **Appellant**

Vs.

Commissioner of CGST & C.Ex. Nashik **Respondent**

<u>Appearance:</u>

None for appellant
Shri Sanjay Hasija, Supdt. (AR) for respondent

<u>CORAM:</u>

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

Date of Hearing & Decision : 18.01.2019

FINAL ORDER NO. **A/86681-86683 / 2019**

Per: S.K. Mohanty

None appeared for the appellant, despite notice. Heard the learned AR for Revenue.

2. On perusal of the order sheet annexed to the appeal records, I find that the matter was initially listed on 26.09.2018 and since the appellant was absent on the said date, the matter was listed for 19.11.2018. On the said date, adjournment request was filed by appellant and accordingly, the matter was listed for hearing on 18.01.2019. On a query from bench,

whether the notice issued by the Tribunal, fixing the date of hearing on 18.01.2019, was sent sufficiently in advance to the appellant, the Court Master has confirmed that the said notice of hearing was issued on 19.11.2018 and dispatched in the address of the appellant through speed post. From the sequence of events mentioned above, it transpires that the appellant is not serious in pursuing for its statutory right of appeal. Accordingly, with the assistance of learned A.R. appearing for Revenue and on the basis of available records, the appeals are taken up for disposal today.

3. Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods namely, Active Pharma Ingredients and Chemical Intermediates, falling under Chapter 29 of Central Excise Tariff Act, 1985. During the disputed period April 2004 to June 2004, the appellant had cleared the said goods to 100% EOUs against CT-3 bond and did not pay excise duty on the said clearances. The appellant availed CENVAT Credit of central excise duty paid on inputs used for manufacture of the said final products. However, due to movement of goods under CT-3, there was no scope for utilization of credit by it. Accordingly, the appellant had filed refund applications on 13.03.2015 and 30.06.2015 under Rule 5 of the Cenvat Credit Rules, 2004 claiming refund of accumulated unutilized CENVAT Credit balance available in the books of accounts. The refund applications were favourably considered by the original authority. Feeling aggrieved with the adjudication orders, Revenue has preferred appeals before the learned Commissioner (Appeals), which were allowed in favour of Revenue in view of insertion of Clause (1A) in the Explanation appended to Rule 5 of the Rules. Since supply of goods to EOU is not qualifying the requirements provided under the said amended Clause inserted

with effect from 01.03.2015, the refund benefit was denied by the learned Commissioner (Appeals). Feeling aggrieved with the order dated 23.02.2018 (impugned herein), the appellant has preferred these appeals before the Tribunal.

4. The issue involved in these appeals for consideration by the Tribunal is, whether the supply made to 100% EOU should be considered as export and can the assessee be entitled for refund of accumulated CENVAT Credit under Rule 5 of the Rules. I find that Clause (1A) was inserted in the Explanation 1 appended to Rule 5 of the Rules vide Notification No. 6/2015-CE (N.T.), dated 01.03.2015. The said amended Rule has clarified that "export of goods means any goods which are to be taken out of India to a place outside India". In these cases, since the appellant had cleared the goods to 100% EOUs located within the country, the requirement of taking out the goods to a place outside India is not satisfied. In view of the fact that the refund applications were filed after amendment of Rule 5 of the Rules, for claiming refund benefit, requirements contained in the statute are strictly to be adhered to. Since the goods in question were not physically exported outside country, benefit of refund provided under the said Rules shall not be applicable to the appellant. I find that in identical case, this Tribunal in the case of CCE, Pune vs. Trimurti Plast Containers Pvt. Ltd. vide order No. A/92026/2017 dated 17.11.2017 has allowed the appeal of Revenue on the ground that refund benefit should not be available to the assessee. The relevant paragraph in the said order is extracted herein below:-

> *"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 (N.T) dated 01.03.2015 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 01.03.2005 therefore same is not relevant to the fact of the present case. As regard the reliance of the Ld. Counsel on Board Circular dated 28.04.2015 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 regard the judgments, I find that all the judgements 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."

5. In view of above, I do not find any merits in the appeals filed by appellant. Accordingly, the same are dismissed.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk