CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.89493 of 2018

[Arising out of Order-in-Appeal No.NSK/EXCUS/000/APPL/218 to 230/18-19, dt.02.08.2018, passed by the CCE (Appeals), GST & CE, Nasik]

M/s Jolly Board Ltd, **......Appellant**
J-6, MIDC Chikalthana,
Aurangabad 431 210

VERSUS

Commissioner (Appeals), GST & CE **......Respondent**
Plot No.155, Sector-34, NH Jeshth Vaishakh, CIDCO,
Nasik 8

WITH

SN	Appeal No.	Appellant	Respondent
1	E/89498/2018	M/s Jolly Board Ltd	CCE Aurangabad
2	E/89499/2018	-do-	-do-
3	E/89501/2018	-do-	-do-
4	E/89511/2018	-do-	-do-
5	E/89512/2018	-do-	-do-
6	E/89514/2018	-do-	-do-
7	E/89518/2018	-do-	-do-
8	E/89520/2018	-do-	-do-
9	E/89523/2018	-do-	-do-
10	E/89525/2018	-do-	-do-
11	E/89526/2018	-do-	-do-
12	E/90090/2018	-do-	-do-

[Arising out of Order-in-Appeal No.NSK/EXCUS/000/APPL/218 to 230/18-19, dt.02.08.2018, passed by the CCE (Appeals), GST & CE, Nasik]

Appearance:
For Appellant : Shri Vinod Awtani, Chartered Accountant
For Respondent : Mrs. A.S. Parab, AC (AR),
Shri Sanjay Hasija, Supdtt.(AR) (in Appeal No.E/89518/2018)

CORAM:

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

FINAL ORDER NO.A/86637-86649/2019

Date of Hearing: 18.09.2019
Date of Decision: 18.09.2019

PER: Dr.D.M. MISRA

These appeals are filed against OIA No.NSK/EXCUS/000/APPL/ 218 to 230/18-19, dt.02.08.2018, passed by the CCE (Appeals), GST & CE, Nasik.

2. Briefly stated the facts of the case are that the Appellant has filed 13 refund applications under Rule 5 of CENVAT Credit Rules, 2004 between the period January 2013 to March 2017, claiming refund of un-utilised CENVAT Credit of input and input services used in export of the goods. The total amount of claim had been reduced by applying the formula prescribed under Rule 5 of CENVAT Credit Rules, 2004; also the cash refund claims relating to the 'segments and castings' were rejected on the ground that the same were capital goods, hence not covered under Rule 5 of CENVAT Credit Rules, 2004. Aggrieved by the said order, they filed appeals before the learned Commissioner (Appeals), who in turn, rejected their appeals. Hence the present appeals.

3. The learned Chartered Accountant for the Appellant has submitted that the methodology adopted in calculating the refund amount under Rule 5 of CENVAT Credit Rules, 2004 was erroneous, inasmuch as while calculating the export turnover, different values have been adopted by the Adjudicating authority in the numerator and denominator of the said formula. He has argued that there should be uniformity in adopting the value i.e. either FOB value or CIF value both at numerators as well the denominator of the said formula. This Tribunal for the earlier period has accepted the contention of the Appellant and remanded the matter to the

Adjudicating authority for reconsideration of the cash refund claim by adopting the correct formula prescribed under Rule 5 of CENVAT Credit Rules, 2004. It is his contention that subsequent to the said orders, the cash refund was sanctioned adopting the FOB value as export turnover both in the numerator and denominator of the formula vide Orders dt.25.03.2019 for the period November 2011 to March 2012 and dt.25.05.2019 for the period July 2016 to September 2016.

4. Further, he has submitted that there are series of judgments under which it has been held that the value adopted in the numerator and denominator should be the same. In support, he has referred to the judgments in the case of Cognizant Technologies - 2016 (43) STR 176 (Tri-Chennai), Zensor Technologies Ltd – 2017 (6) GSTL 91 (Tri-Mumbai), Musigma Business Solutions Pvt. Ltd. – 2018 (11) GSTL 385 (Tri-Bang).

5. On the issue of denial of credit on 'segments and castings', the learned Chartered Accountant has submitted that the Segments are used in the process of grinding of pulp; the said segments lasts only for 150 to 160 MTs of the raw material and get exhausted. Therefore, the product even if classified by the supplier under Chapter 84 as 'capital goods', the same should be considered as an input and cash refund of the accumulated CENVAT Credit against the said segments and castings be allowed to them. Alternatively, in the event the said segments and castings are considered as capital goods, the Appellant be allowed to take re-credit of the CENVAT

amount claimed as cash refund, as there is no dispute about its admissibility to credit as capital goods.

6. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals). He has submitted that he has no objection in remanding the matter to the Adjudicating authority to reconsider the formula prescribed under Rule 5 of CENVAT Credit Rules, 2004, in the light of the judgment of this Tribunal dt.21.01.2009 on the issue of admissibility of cash refund on segments and castings, the learned A.R. has submitted that these are capital goods classified by the supplier of the said input under Chapter sub-heading 84399100 of Central Excise Tariff Act, 1985. The said segments are used for the purpose of grinding, hence cannot be considered as input even if it has got limited life and exhausts / consumes in the process of grinding of the pulp of 150 to 160 MTs. In support, he has referred to the judgment of this Tribunal in the case of Collector of C.E. Mumbai Vs Samyak Tools - 2003 (151) ELT 373 (Tri-Delhi).

7. Heard both sides and perused the records.

8. The undisputed facts are that the Appellant was denied cash refund of accumulated CENVAT Credit on export of goods amounting to Rs.14,06,593/-. Out of the said amount, Rs.10,36,719/- was held to be inadmissible by taking different values in the numerator and denominator of the formula prescribed under Rule 5 of CENVAT Credit Rules, 2004. The argument of the Appellant that since different values were applied in the numerator and the denominator of the said formula, it has resulted into reduction of refund claim to

Rs.10,36,719/-. On the said issue, this Tribunal for the earlier period, held that the formula adopted by the Revenue is incorrect having two values in the numerator and the denominator. Pursuant to the said remand order, the Adjudicating authority has adopted the FOB value in the numerator as well as in the denominator. Therefore, the present appeals are also remanded to the Adjudicating authority to calculate the refund claim by adopting the uniform value in the numerator as well as the denominator of the formula prescribed under Rule 5 of CENVAT Credit Rules, 2004. As far as the issue relating to the admissibility of CENVAT Credit on segments and castings is concerned, undisputedly, it is classified under Chapter sub-heading 84399100 of Central Excise Tariff Act, 1985 as 'capital goods'. Merely because the said capital goods gets exhausted after it is used in grinding the materials of approximately 150 MTs, it cannot be classified as an 'input' used for manufacture of finished goods viz. Bagassae Board falling under Chapter 44 of Central Excise Tariff Act, 1985. Thus, the cash refund of Rs.3,69,874/- on the Segments has been correctly denied under Rule 5 of CENVAT Credit Rules, 2004 and accordingly not admissible to the Appellant. In the result, the impugned order is modified to the extent of remanding the matter relating to redetermination of cash refund applying the correct formula.

9. Appeals are partly allowed to the extent as mentioned above.

(Operative part of the order pronounced in the open court)

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

Bahalkar