CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 89763 of 2013

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APP-275-13-14 dated 30.09.2013 passed by the Commissioner of Central Excise & Customs (Appeals), Nashik.)

Commissioner Central Excise, Nashik ....Appellant
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Nasik – 422 002

VERSUS

M/s Kiran Elastomers Pvt. Ltd. ....Respondent
Plot No. B-115, MIDC Malegaon
Sinnar, Nashik – 422 113

<u>APPERANCE:</u>

Shri Anil Choudhary, Deputy Commissioner, Authorised Representative for the Appellant
Ms. Padmavati Patil, Advocate for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87055/2019

Date of Hearing: 16.07.2019
Date of Decision: 15.11.2019

Grant of refund by the learned Commissioner (Appeals) of unutilised CENVAT credit accumulated against inputs and input services used for goods manufacture and supplied to 100% Export Oriented Unit (EOU) is assailed in this appeal by the Revenue-Department.

2. Factual backdrop of the case, in a nutshell, is that respondent is a manufacturer of Printed Aluminium Foils which were supplied by it to 100% EOU used for packing of their final products for export for the period between October, 2012 and March, 2013 for two quarters. Appellant filed refund claims for Rs. 14,05,908/- and Rs. 10,24,576/- respectively under Rule 5 of CENVAT credit Rules, 2004 against which it had received two show-cause notices dated 15.07.2013 from the Deputy Commissioner of Central Excise and Customs, Nashik-IV Division proposing to reject the same refund claims which were ultimately rejected by him through adjudication orders. However, respondent challenged the same before the Commissioner of Central Excise (Appeals), Nashik who vide his above referred order under challenge, allowed both the refunds. Department of Revenue is in appeal challenging the legality of such order.

3. I have heard from both sides and perused the case records. As found from the Order-in-Appeal, the Commissioner (Appeals) had observed that the Assistant Commissioner i.e. refund sanctioning Authority had wrongly interpreted Rule 5 of the CENVAT Credit Rules, 2004 by stating that refund under this rule is permissible only if the goods are exported out of India and in case finished goods are cleared to 100% EOU against CT-3 which is considered as deemed export, refund is not admissible and such observation by wrong interpretation Notification No. 5/2006-CE (NT) dated 14.03.2006 as superseded by Notification No. 27/2012-CE (NT) dated 18.06.2012 is erroneous, since the spirit behind Rule 5 of the CENVAT Credit Rules,

2004 is to allow refund of CENVAT credit against deemed export also, as has been held in judgments reported in *NBM Industries – 2012 (276) ELT 9 (Guj), Elcomponics Sales - 2012 (279) ELT 280 (T), Affirmed in Hon'ble Allahabad High Court - 2014 (310) ELT A-89, Rangdhara Polymers - 2011 (264) ELT 275 (T), Rangdhara Polymers - 2014 (300) ELT 391 (Guj), Manoj Handlooms - 2009 (240) ELT 158 (T), Shilpa Copper - 2011 (269) ELT 17 (Guj), Western Cans - 2011 (270) ELT 101 (T), Uniworth Textiles - 2016 (341) ELT 438 (T), JBM Auto Ltd. – 2017-TIOL-1199-HC-ALL-CX, Anita Synthetics Pvt. Ltd. - 2014 (306) ELT 133 (Guj),* on which reliance is also placed by learned Advocate for the respondent during the arguments. Further the learned Commissioner (Appeals) also made his observation in respect of inapplicability of judgment of the Hon'ble Supreme Court passed in the case of *M/s Priya Blue Industries Ltd. Vs. CC (Prev)* reported in *2004 (172) ELT 145 (SC),* decision of this Tribunal reported in *2007 (208) ELT 274 (Tri.-Del.)* and Hon'ble Madras High Court decision in the case of *M/s BAPL Industries Ltd. Vs. Union of India* reported in *2007 (211) ELT 23 (Mad.),* which is also relied upon by the learned Authorised Representative during his argument before this Tribunal, with his observation that in none of those judgements the issue concerning use of inputs in the manufacture of goods supplied to 100% EOU was involved. No irregularity and illegality can be attributed to such an observation made by the learned Commissioner (Appeals) so as to invoke appellate jurisdiction of this Tribunal. Further this Tribunal in its order dated 22.09.2017 reported in *2017-TIOL-4269-CESTAT-MUM* in respondent’s own case for the period prior to period under dispute had allowed refund to the respondent by holding that there was no significant difference as regards term 'export' for the purpose of Rule 5 of CENVAT Credit Rules, 2004, during pre and post amendment introduced to Rule 5 in 2012. Hence in carrying forward the judicial precedent set by this Tribunal, the following order is passed.

ORDER

4. The appeal is dismissed and the order passed by the Commissioner of Central Excise & Customs (Appeals), Nashik vide Order-in-Appeal No. NSK-EXCUS-000-APP-275-13-14 dated 30.09.2013 is hereby confirmed.

(Order pronounced in the open court on 15.11.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad