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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 85589 of 2019

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/271/18-19 dated 12.11.2018 passed by Commissioner of GST and CX. (Appeals-III), Mumbai)

M/s Accusynth Speciality Chemicals P. Ltd. .....**Appellant**
Shivam Chambers, 106/108,
1st Floor, S.V. Road,
Goregaon West,
Mumbai-400062

VERSUS

Commissioner of C.G.ST. - Palghar .....**Respondent**
Utpad Shulk Bhawan,
5th Floor, Bandra Kurla Complex,
Bandra East,
Mumbai-400051

Appearance:

Shri Rajiv Gupta, Consultant for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85149 / 2020

Date of Hearing: 20.01.2020
Date of Decision: 20.01.2020

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. The learned Commissioner (Appeals) vide the impugned order dated 12.11.2018 has denied the refund benefit claimed by the appellant under Rule 5 of the Cenvat Credit Rules, 2004, holding that the period of limitation provided under Section 11B of the Central Excise Act, 1944 should be applicable for claiming the refund amount. The issue arising out of the present dispute is no more *res integra* in view of Order No. A/85514/2019 dated 13.03.2019 of this Tribunal, passed in the case of Technocraft Industries (I) Ltd. The Tribunal has held that the limitation period provided under Section 11B *ibid* is applicable for refund claim of accumulated Cenvat credit in terms of Rule 5 *ibid*. The

relevant paragraphs in the said order are extracted herein below:-

> *"7. The short issue involved in the present appeal for determination is whether the cash refund claim of accumulated CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 for the period January to Sept, 2008 filed by the appellant on 3.9.2010 is barred by limitation or otherwise. Undisputedly, the exports were carried out from the date of filing of refund claim. The contention of the appellant that the period prescribed under Section 11B to claim the cash refund of the accumulated Cenvat credit is not applicable. The Revenue relied upon the judgment of Hon'ble Madras High Court in GTN Engineering (supra), which was subsequently followed in Hyundai Motors' case (supra). We find that the issue has been considered at length by the Hon'ble Madras High Court in the case of GTN Engineering (supra) and observed as follows: -*
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> > ***"14.*** *The said notification prescribes a period of one year, as provided under section 11B of the Central Excise Act, for the purpose of making application in Form-A along with prescribed enclosures and also the relevant extracts of the records maintained under the Central Excise Rules, 2002, Cenvat Credit Rules, 2004 or Service Tax Rules, 1994 in original. That application should be filed before the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be. For the purpose of finding out as to the relevant date for the purpose of making claim for refund of CENVAT credit, Rule 5 should be made applicable. It is the contention of the learned counsel for the assessee that the provision defining relevant date does not cover the claim for refund of CENVAT credit. We may point out that when a statute empowered for such claim, the said provision must be read to find out as to the relevant date. Rule 5 specifies that "where any input or input service is used in the manufactures of final product which is cleared for export under bond or letter of undertaking as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed."*
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> > ***15.*** *A reading of the above rule, though there is no specific relevant date is prescribed in the notification, the relevant date must be the date on which the final products are cleared for export. If any other conclusion is arrived, it will result in disentitling any person to make a claim of refund of CENVAT credit. Admittedly, the respondent has made a claim only invoking Rule 5 of the CENVAT Credit Rules, 2004. In that view of the matter, there cannot be any difficulty for us to hold that the relevant date should be the date on which the export of the goods was made and for such goods, refund of CENVAT credit is claimed.*
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> > ***16.*** *The learned counsel for the respondent would rely upon a judgment of the Gujarat High Court reported in 2008 (232) E.L.T. 413 (Guj.) [Commissioner of Central Excise and Customs, Surat-I v. Swagat Synthetics]. That was a case relating to sub-rule (13) of Rule 57F of Central Excise Rules, 1944, which reads as under :*

> *"(13) Where any inputs are used in the final products which are cleared for export under bond or used in the intermediate products cleared for export in according with sub-rule (4), the credit of specified duty in respect of the inputs so used shall be allowed to be utilised by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette."*

The said rule does not prescribe any time-limit. In the absence of such prescription as to the limitation, the Gujarat High Court has held that the claim of refund could not be rejected on the ground of limitation.

17. *The learned counsel would also rely upon a Judgment of Madhya Pradesh High Court at Indore reported in 2009 (236) E.L.T. 248 (M.P.) [STI India Ltd. v. Commissioner of Customs and Central Excise, Indore]. In that case, though the Court has held that Clause 6 of Appendix read with Section 11B of Central Excise Act, 1944, cannot be made applicable insofar as the period of limitation is concerned when a claim for CENVAT credit is made, a reading of the said provision shows that there is no reference to Rule 5. With great respect, we are not in agreement with the said judgment as the judgment was rendered based on the rules and the notification which are procedural in nature. As we have found that but for the provision of Rule 5 r/w notification, the respondent could not have filed the application for refund, he has to satisfy the limitation clause as provided under Section 11B of the Act.*

18. *In view of the above, the order of CESTAT holding that the limitation is not applicable to the facts in question to the case has to be set aside. Accordingly the same is set aside.*

8. We do not find any reason not to follow the ratio laid down by of the Hon'ble Madras High Court in GTN's case (supra). Consequently, the impugned order is upheld and appeal, being devoid of merit, is dismissed."

3. In view of the above decision of the Tribunal, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) in denying the refund benefit to the appellant on the ground of limitation. Accordingly, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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