CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 89369 of 2013

(Arising out of Order-in-Appeal No. SK/229/RGD/2013-14 dated 27-08-2013 passed by the Commissioner of Central Excise (Appeals), Raigad)

........Appellant

MILAN LABORATORIES -I- PVT LTD
Plot No 63 & 87
Jawahar Co-Op Indus. Estate
PANVEL-410 209.

VERSUS

Commissioner of Central Excise ....Respondent
RAIGAD
Utpad Shuk Bhavan Plot No.1
Sector-17, Khandeshwar
NAVI MUMBAI-410 206

APPERANCE:

Shri H.P. Kanade, Advocate for the Appellant
Shri Anil Choudhary, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85214/2020

Date of Hearing: 30-10-2019

Date of Decision: 14-02-2020

DR. SUVENDU KUMAR PATI:

Denial of refund of Cenvat Credit to the appellant on the ground that the same could have been adjusted against payment of tax on inputs and Cenvat Credit account was not debited at the time of making the claim is assailed in this appeal.

2. Briefly stated the facts of the case is that appellant is a manufacturer of medicaments which are mostly exported under bond/LUT without payment of duty as well as with payment of duty under rebate claim. It procures input for such manufacturing @ 12% *ad volerm* Excise duty while finished goods are cleared marginally to the domestic market @ 6%, besides exports. Due to variation of input and output ratio, there was huge accumulation of input credits even after adjustments towards payment of tax, as the finished goods suffer less duty. Further during the period January, 2012 to March, 2012, appellants sought refund of Rs. 5,25,757/- under Rule 5 of CCR on 19-11-2012 but the same was rejected on the above referred grounds by the adjudicating authority as well as Commissioner (Appeals). The order of rejection passed by the Commissioner (Appeals) is challenged in this appeal.

3. In the memo of appeal and during the course of hearing of appeal, Learned Counsel for the appellant Mr. H.P. Kanade submitted that credit was bound to accumulate as inputs were procured @ 12% duty and output to domestic market was scanty and the rate of duty for such clearance was only 6%. He further submitted that appellant had realised its mistake that it had not debited Cenvat Credit account on the date of filing of refund claim but undertook through a letter dated 07-

03-2013, in response to the show cause notice, that it would debit the account after sanction of refund and before disbursal since there was no provision available in the software system to further credit the Cenvat account, in case of rejection of refund claim. In citing judicial decision reported in *2007 (217) E.L.T. 299 (Tri.-Mumbai) of IDOL TEXTILES LTD v. COMMISSIONER OF C. EX., THANE-1* and *2015-TIOL-2076-CESTAT-MUM of SANDOZ PVT LTD v. COMMISSIONER OF CENTRAL EXCISE, Belapur*, she also submitted that Rule 5 of Cenvat Credit Rule, 2004 being a beneficial piece of legislation, extents the substantive right to the assesse for which failure to debit the Cenvat Credit account on the date of refund claim is not such an irregularity that would debar the appellant from the refund. She has drawn attention of this court to notification no. 27/2012-CE (N.T.) dated 18th June 2012 to justify that those safeguard/condition and limitation guides the assesse for proper filing of refund, and any lapse on the part of the claimant to fulfil the condition should be considered as a removable procedural irregularity and the same not have affected the claim for refund and therefore the order of the Commissioner (appeals) is required to be set aside.

4. In response to such submissions, Learned Authorised Representative for respondent Mr Anil Choudhary argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and drawn attention of this court to the findings in order-In-Original that was accepted by the Commissioner (Appeals) that appellant had also exported finished goods on payment of duty during the relevant period and utilised the Cenvat Credit for which its submission that utilisation of Centvat Credit was not possible was

without substance for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. Perused the case record. It is observed that the Range Superintendent's calculation sheet is reproduced in the Order-In-Original at para 5 along with detail of export made during the period at para 7. Learned Adjudicating Authority had observed that assessee had cleared goods for export under LUT as well as on payment of duty and therefore, there was opportunity on the part of the assesse to utilise accumulated credit for export of goods on payment of duty. Appellant had not denied the same but its only contention was that even after payment of all duties, it had accumulated Cenvat credit because of high rate of duty in the input and low rate duty in the output, which is required to be refunded. <u>Going by Rule 5 of Cenvat Credit rule, it is manifestly cleared that refund is admissible where for any reason such adjustment is not possible</u>. In the instance case, adjustment of 12% duty on inputs can never be made possible against 6% on output to bring the difference to 'zero' level. Therefore the Learned Commissioner (Appeals) should have refunded the balance amount which was available to the claimant as further adjustment was not possible.

6. The other ground of rejection that debit was not made in the Cenvat ledger by the appellant on the date of filing of refund needs no further elaboration in view of reported judgements cited above in the case of IDOL TEXTILES LTD and SANDOZ PVT LTD, which were probably lost sight of the adjudicating authority and the Commissioner (Appeals). Hence the order.

ORDER

7. The appeal is allowed and the order no. SK/229/RGD/2013-14 dated 27-08-2013 passed by the Commissioner of Central Excise (Appeals) is hereby set aside. The appellant is entitled to get refund of Rs. 5,25,757/- under Rule 5 of Cenvat Credit Rules, 2004 along with applicable interest as per Section 11BB of the Central Excise Act, 1944 from 3 months after the final refund application filed till refund is made. The respondent department is directed to pay the same within 3 months of receipt of this order.

(Order pronounced in the court on 14-02-2020)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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