

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 89692 OF 2018

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM/101-103/18-19 dated 28th May 2018 passed by the Commissioner of GST and Central Excise (Appeals – III), Mumbai – III.]

Raychem RPG Pvt Ltd
1/62 M G Road, Near Bharat Petroleum Pump
Opp: Western Express Highway, Sativali, Vasai East
Dist: Thane – 401 208

... Appellant

versus

Commissioner of GST and Central Excise
Palghar
Utpad Shulk Bhawan, 5th Floor, Bandra Kurla Complex
Bandra East, Mumbai - 400051

...Respondent

APPEARANCE:

Shri Mehul Jiواني, Chartered Accountant for the appellant
Shri Sanjay L Hasija, Superintendent (AR) for the respondent

WITH

EXCISE APPEAL NO: 85305 OF 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM/101-103/18-19 dated 28th May 2018 passed by the Commissioner of GST and Central Excise (Appeals – III), Mumbai – III.]

Raychem RPG Pvt Ltd
1/62 M G Road, Near Bharat Petroleum Pump
Opp: Western Express Highway, Sativali, Vasai East
Dist: Thane – 401 208

... Appellant

versus

Commissioner of GST and Central Excise
Palghar
Utpad Shulk Bhawan, 5th Floor, Bandra Kurla Complex
Bandra East, Mumbai - 400051

...Respondent

AND

EXCISE APPEAL NO: 85313 OF 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM/101-103/18-19 dated 28th May 2018 passed by the Commissioner of GST and Central Excise (Appeals – III), Mumbai – III.]

Raychem RPG Pvt Ltd
1/62 M G Road, Near Bharat Petroleum Pump
Opp: Western Express Highway, Sativali, Vasai East
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... Appellant

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Commissioner of GST and Central Excise
Palghar
Utpad Shulk Bhawan, 5th Floor, Bandra Kurla Complex
Bandra East, Mumbai - 400051

...Respondent

APPEARANCE:

Shri Mehul Jiواني, Chartered Accountant for the appellant

Ms Anuradha S Parab, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85521-85523 /2022

DATE OF HEARING:	23/12/2022
DATE OF DECISION:	09/06/2022

These three appeals of M/s Raychem RPG Pvt Ltd arise from partial rejection of claim for refund preferred under rule 5 of CENVAT Credit Rules, 2004 and the confirmation thereof by the first appellate authority in order-in-appeal no. NA/GST A-III/MUM/101-103/18-19 dated 28th May 2018 of Commissioner of GST and Central

Excise (Appeals – III), Mumbai. Claims for April 2016 to June 2016, July 2016 to September 2016 and October 2016, seeking refund of accumulated CENVAT credit of ₹ 54,75,285, ₹ 34,57,425 and ₹ 75,90,823 respectively, were allowed to the extent of 23,75,346, ₹ 31,28,513 and ₹ 67,28,205. Two aspects were highlighted by both sides: one relating to ineligibility owing to infirmities in the claim and the primary issue of inclusion of credit that had been restored consequent upon rejection of claims for previous periods in the computation of entitlement in subsequent claims.

2. The appellant is a ‘hundred percent export oriented unit (EOU)’ holding ‘letter of permission (LoP)’ from the competent authority under the Foreign Trade Policy and exports the bulk of its manufacture owing to which substantial amounts of credit of tax/duty paid on input service/inputs accumulates in CENVAT credit account with no opportunity for utilization. Such credit is permissible to be released, as refund, under the authority of rule 5 of CENVAT Credit Rules, 2004 in accordance with the procedures prescribed by Central Board of Excise & Customs (CBEC). It may be stated at the outset that rejection of the whole or any part thereof is to be contemplated only to the extent that export has not occurred or to the extent of being in excess of the computation in accordance with the formula prescribed therein. The formula is intended to ensure that such monetization of credit of taxes/duties paid is limited to deployment in

export goods. Credit is a pooling of taxes/duties paid on input service/input used in manufacture of output or rendering of output service and the impossibility of segregation for one-to-one correlation requires such computation of attribution.

3. It is not on record that appellants were ineligible for any part of the credit so accumulated which would have to be erased only by recourse to rule 14 of CENVAT Credit Rules, 2004. However, it has been argued by Learned Authorized Representative that refund claimed for July 2016 to September 2016 was restricted for two reasons, viz., revision in export turnover as accepted by the assessee and non-acceptability of some invoices which precludes a plea for revision of turnover at this stage for which the decision of the Hon'ble Supreme Court in *ITC Ltd v. Commissioner of Central Excise, Kolkata-IV [2019-TIOL-418-SC-CUS-LB]* barring refund, except in circumstances of assessment having been successfully challenged, has been cited.

4. In the light of such complicated submissions, it is necessary to peruse the reasons for denial of refund of ₹ 30,99,939, ₹ 3,28,912 and ₹ 8,62,618, for the three periods. The claims for the first quarter and third quarter of 2016-17 were held as ineligible to the extent of ₹ 29,89,366 and ₹ 4,28,264 for having been attributable to earlier periods for which the refund that had been not sanctioned was

recredited in CENVAT credit account for the impugned periods and not entitled to be.

5. Owing to a different address in the invoice, refund of ₹ 1,13,101 was denied along with that of ₹ 1470 and ₹ 11 for procedural lapses for the first quarter of 2016-17. Reliance has been placed on the decisions of the Tribunal in *ITW India Ltd v. Commissioner of Central Excise, Customs & Service Tax* [2016 (46) STR 419 (Tri-Bang)] and in *Madura Garments Exports Ltd v. Commissioner of Central Excise & Service Tax, LTI, Mumbai* [2015 (39) STR 661 (Tri-Mumbai)] in support of the claim for eligibility of the first. For the second quarter, refund of ₹ 2,25,635 was denied by revision of export turnover which is challenged by assessee for incorrect computation from the respective returns of each month, ₹ 1,05,672 for mismatch arising from partial credit taken and ₹ 1451 for not having submitted invoices. For the third quarter, refund of ₹ 3392 was denied for non-submission of invoices.

6. Rule 5 of CENVAT Credit Rules, 2004 has been specially formulated for neutralizing tax/duty paid on input service/input used for generating exports. The disposal of claims for refund under this provision is, as already premised, is limited to ascertainment of quantum of exports and the application of the formula prescribed for ascertainment of attribution of such input service/input to exports.

Any amount not sanctioned is to be recredited in the CENVAT credit account on the presumption of credit having been correctly availed under rule 3 of CENVAT Credit Rules, 2004 and, in the absence of proceedings initiated under the authority of rule 14 of CENVAT Credit Rules, 2004, availment of credit is not to be revisited. Therefore, the denial of refund on the presumption of *ab initio* ineligibility will not stand and refund procedure cannot be claimed to be a substitute for recovery. The denial on these grounds is without authority of law.

7. The submission of Learned Authorized Representative that adoption of revised turnover for the second quarter, notwithstanding at the initiative of the competent authority, precludes challenge at this stage is not tenable. The appellant has established that the turnover in the three returns for July – September of 2016 was ₹ 16,77,42,012 against the ₹ 15,64,13,273 deployed in the computation. The sanctioning authority has not adduced credible reasons for such revision and, therefore, the entitlement must be based on turnover declared in the statutory returns. It is difficult to conjecture even the remotest of link with circumstances in which the decision of the Hon'ble Supreme Court in *re ITC Ltd*, which was concerned with refund of duties claimed to have been collected in excess, had been rendered. In seeking to monetize accumulated credit which is a privilege, as it were, available to exporters, there is no plea of wrongful levy of

tax/duty from the provider of input service/supplier of input; the pre-requisite of challenge to assessment has nothing to do with computation of export turnover which is solely a reflection of record. Denial of claim for ₹ 2,25,635 was incorrect. Denial of claim for mismatch is also not acceptable as appellant has offered justification for the truncation insofar as CENVAT credit account is concerned.

8. All that now remains is the challenge to denial owing to 'padding up' of eligible CENVAT credit of earlier periods that had to be re-credited following rejection of refund claim to that extent. According to Learned Chartered Accountant, there is no disbarment in rule 5 of CENVAT Credit Rules, 2004 or in the pursuant notification prescribing safeguards, conditions and limitations to either the restoration of credit or its inclusion in the computation of refund eligibility for a subsequent period. He also relied upon the decision of the Tribunal in *Spiderlogic India Pvt Ltd v. Commissioner of Service Tax, Pune* [2017 (8) TMI 553 – CESTAT MUMBAI]. Learned Authorized Representative attempted to distinguish the situation in this decision from the facts in the impugned dispute inasmuch as the exclusion of the amount in *re Spiderlogic India Pvt Ltd* occurred before the application of the formula. The difference between the two is not easily apparent as the issue in both disputes was merely the question of whether ineligible amount of a particular quarter, when restored, can be included in a subsequent quarter for computation of

credit available for attribution to subsequent exports. If the argument of Learned Authorized Representative is taken to its logical conclusion, then each such restored credit must be subjected to ascertainment of cause for exclusion; it is not the case of the central excise authorities that the restored credit was entirely on account of application of the formula and, thereby, attributable to goods cleared domestically. Indeed, that does not resonate with the proportion of manufacture that is exported by the appellant. It would also appear that Learned Authorized Representative seeks to impose the test of one-to-one correlation which is anathema to the scheme of CENVAT credit.

9. Learned Authorized Representative contended that the decision of the Tribunal in *Commissioner of Central Excise v. Kunj Alloys Ltd* [2017 (346) ELT 275 (Tri-Kolkata)] and in *Decos Software Development P Ltd v. Commissioner of Central Excise, Pune-III* [2017 (50) STR 42 (Tri-Mumbai)] applied to such situations. In the former, though the details leading to the dispute are not clear, it would appear that the appeal of Revenue was allowed on the factum of credit utilized being in excess of credit taken for the period and, hence, would not being conformity with entitlement to refund of ‘unused credit’; an observation culled out from one sentence, *de hors* submission on its contextual relevance, is not the correct approach for citing as binding precedent. In *re Decos Software Development P Ltd*,

the line has been clearly drawn that credit availed during the pertinent quarter alone would constitute 'net CENVAT credit' and it is not the case of Revenue that, in the present dispute, the credit, even if originally availed in another quarter, was not eligible for restoration, to the extent of rejection, after such rejection.

10. The determination in *re Spiderlogic India Pvt Ltd* that

'6. From the reading of the above Rule, it can be seen that for the purpose of refund, the net cenvat credit means the total cenvat credit availed on inputs and input services by the manufacturer or output service provider reduced by the amount reversed in terms of sub- rule 5 (c) of Rule 3, during the relevant period. In the facts of the present case, there is no dispute that the credit of ₹ 231, 688/- was availed by appellants during the relevant period April 2013 to June 2013 under the authority of clause (i) of paragraph 2 of notification 27/12-CE (NT). Therefore this amount of ₹ 231, 688/- is nothing but the credit availed during the relevant quarter. Therefore, this amount must be taken into total amount of net cenvat credit availed. Even though the refund in respect of this amount was earlier rejected on the ground of time bar, this cannot be the reason for denying the refund as the credit of same amount in the subsequent quarter, the law permits the assessee to take back the creditor said amount for which the refund was not earlier granted. If the amount of cenvat credit of ₹ 231688/- is reduced for the purpose of net cenvat credit the provisions of clause (i) of para 2 of notification 27/12-CE (NT) dated 18.06.2012 shall become redundant which is not the intention of the legislature. It is also pertinent to note that the appellant is 100% EOU, so whatever cenvat credit has been availed on

the input service, entire amount is refundable. In this case no one to one core relation is required...'

sets it out clearly.

11. An assessee such as the appellant, manufacturing primarily for the international market, has little scope for utilization of CENVAT credit in the normal course of discharge of duty liability. It is not the case of Revenue that the appellant had cleared goods domestically on payment of duty and was, through the refund route, attempting to recover the same; there is a certain lack of logic too in that. Any remnant by application of formula, and its precise intendment, can trace its origin to input lying unutilized or input service yet to be utilized for manufacture. Its utilization in some subsequent period can be reflected only by restoration of the rejected portion of a claim for refund. The restoration is permitted by law and the availment suffices to entitle inclusion for apportionment towards export of a subsequent quarter.

12. The claim of the appellant has been wrongly discarded by the lower authorities. Consequently, the impugned order is set aside and appeal allowed.

(Order pronounced in the open court on 09/06/2022)

(C J MATHEW)
Member (Technical)