CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85626 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/531/18-19 dated 20.11.2018 passed by the Commissioner of Central Excise & CGST (Appeals), Nashik)

M/s Mylan Laboratories Limited .... **Appellant**
Plot No. F-4 & F-12, MIDC, Malegaon,
Tal. Sinnar, Dist. Nashik, Maharashtra-422113.

Versus

Commissioner of Central Excise And Service Tax-Nashik .... **Respondent**
Plot No. 155, Sector P-34, NH, Jaishtha-Vaishakh,
CIDCO, Nashik, Maharashtra – 422008.

Appearance:

Shri C.S. Srinivas, Consultant for the Appellant

Shri Xavier R. Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85523/2023

Date of Hearing: 06.04.2023
Date of Decision: 06.04.2023

Per: Anil G. Shakkarwar

Brief facts of the case are that the appellant is 100% Export Oriented Unit (EOU) and availed CENVAT Credit of Rs. 1,29,197/- on the inputs against the invoices supplied by importer. The appellant filed a claim for refund of Rs. 1.46 crores on 27.02.2017 for the period from April 2016 to June 2016 under Notification No. 27/2012 dated 18.06.2012 issued under Rule 5 of CENVAT Credit Rules, 2004. The said amount of Rs. 1,29,197/- was part of Rs. 1.46 crores. A show cause notice dated 15.05.2017 was issued by

Revenue proposing rejection of Rs. 53,26,774/- out of said amount of Rs. 1.46 crores. Rs. 1,29,197/- was a component of Rs. 53,26,774/-. The ground for denial of refund of Rs. 1,29,197/- was that the required particulars as required by CENVAT Credit Rules were not available on the documents on the basis of which such credit was availed by the appellant. The original authority through Order-in-Original dated 31.10.2017 allowed refund of some amount and rejected refund of Rs. 53,26,774/- which included the amount of Rs. 1,29,197/-. The appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) has upheld the Order-in-Original in respect of denial of refund of Rs. 1,29,197/- and for the remaining part, remanded the matter to the original authority. The remanded part of the impugned order is not challenged before this Tribunal. This appeal is against that component of the impugned Order-in-Appeal through which refund of Rs. 1,29,197/- was rejected.

2. Learned Consultant on behalf of the appellant has submitted that the admissibility of CENVAT Credit cannot be questioned at the time of processing of refund claim.

3. Learned AR has submitted that law is very clear that essential particulars as required by Rule 9 of CENVAT Credit Rules, 2004 are essential for availment of CENVAT Credit and in the present case the proceedings reflect that such particulars were not available in the invoice on the basis of which CENVAT Credit of Rs. 1,29,197/- was availed.

4. I have carefully gone through the records of the case and submissions made. I have also perused the show cause notice dated 15.05.2017. Paragraph 3.1 of the said show cause notice

indicates that the CENVAT Credit was availed on 13.04.2016 and 03.06.2016 and show cause notice was issued on 15.05.2017. From this record it appears that the show cause notice was issued within the normal period of availment of CENVAT Credit. However, Rule 14 of CENVAT Credit Rules, 2004 was not invoked for denial of CENVAT Credit of Rs. 1,29,197/- availed on 13.04.2016 and 03.06.2016. Therefore, through the said show cause notice, denial of CENVAT Credit of Rs. 1,29,197/- is not in accordance with law.

5. As observed above inspite of the deficiencies recorded in the invoices on the basis of which CENVAT Credit of Rs. 1,29,197/- availed by the appellant, the said credit remains on the books of account of the appellant for the reason that the original authority has not invoked Rule 14 of said rules to recover the said amount. Since the said amount of credit is available on the books of account of the appellant, the refund of the same cannot be denied. I, therefore, direct the original authority to grant refund of Rs. 1,29,197/- to the appellant under Rule 5 of CENVAT Credit Rules, 2004.

6. In above terms, appeal is allowed.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha