CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89747 of 2013

(Arising out of Order-in-Appeal No. AV(308)279/2013 dated 26.11.2013 passed by the Commissioner of Central Excise &Customs (Appeals),Aurangabad)

M/s Suneem Industries Pvt. Ltd. **.... Appellant**
Plot No. C-12, Five Star Industrial Area,
Shendra, Aurangabad

Versus

Commissioner of Central Excise &Customs, Aurangabad **.... Respondent**
N-5, CIDCO, Town Centre, Aurangabad – 431 203

Appearance:

Shri Jitin Singhal, Advocate for the Appellant

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87551/2024

Date of Hearing: 18.12.2024
Date of Decision: 18.12.2024

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants herein are engaged, *inter alia,* in the manufacture of Aluminium Ingots, falling under Chapter 7601 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of central excise duty paid on the inputs and Service Tax on the input services. During the disputed period, the appellants' production activities were stopped and due to suspension of such production activity, they were not in a position to utilise the accumulated CENVAT Credit balance available in their books of account. Therefore, they had filed a refund application under Rule 5 of the CENVAT Credit Rules, 2004, claiming refund of accumulated CENVAT Credit of Rs.1,96,64,180/-. The refund application filed by the appellants was sought

to be denied by the Department on the ground that Rule 5 ibid deals with the situation of grant of refund in case of non-utilization of CENVAT Credit on the inputs, which were used for manufacture of the final products exported by the assessee. On the basis of such understanding, show-cause notice dated 17.07.2013 was issued by the Department, which was adjudicated by the jurisdictional Assistant Commissioner of Central Excise & Customs, Aurangabad, vide order dated 04.10.2013, in rejecting the refund application filed by the appellants. On appeal against the said adjudication order, learned Commissioner (Appeals) vide the impugned order dated 26.11.2013 has upheld confirmation of the adjudged demands against the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order of this Bench of the Tribunal passed in the case of *M/s ATV Project India Ltd. Vs. Commissioner of Central Excise & Service Tax, Raigad – 2023 (9) TMI 802 – CESTAT MUMBAI*. The relevant paragraphs recorded in the said order are extracted herein below: -

> *"29.1 Cenvat scheme is a beneficial piece of legislation, which aims at avoiding the cascading effect of duty on duty, in the course of manufacture of the excisable goods or provision of the output service. Upon deriving the powers conferred by Section 37 of the Central Excise Act, 1944 and Section 94 of the Finance Act, 1994, the Central Government has framed the Cenvat Credit Rules, 2004. Sub-rule (1) of Rule 3 ibid, permits a manufacturer to take cenvat credit of various duties and taxes paid on the inputs/input services for use in, or in relation to the manufacture of the excisable final product(s). The credit so availed, is permitted for utilisation in the manner provided under sub-rule (4) of Rule 3 ibid. It has been provided that cenvat credit may be utilised for payment of any duty of excise on any final product; or an amount equal to cenvat credit taken on inputs, if such inputs are removed as such or after being partially processed; or an amount equal to the cenvat credit taken on capital goods, if such capital goods are removed as such; or an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or service tax on any output service.*
>
> *29.2 As a manufacturer of excisable goods, the appellant herein got itself registered with the jurisdictional Central Excise authorities. It has also availed cenvat credit of central excise duty paid on the inputs and capital goods as well as service tax on the input services. Availment of cenvat credit by the appellant as per the statutory provisions has never been objected to by the department. Further, it is not the case of Revenue that the cenvat credit availed inputs or capital goods were removed by the appellant, without putting the same for intended purpose i.e., manufacture of final products. This is evident from the fact that the appellant had continued to maintain the credit balance in the cenvat account till closure of the factory. Since, the appellant could not continue to carry on its business activities, for whatever reason, had ultimately surrendered the registration certificate. Owing to the reason of non-utilisation of cenvat credit for the intended purpose, the appellant had claimed the un-utilised cenvat credit lying in its books of*

accounts. The only active provision for grant of refund of cenvat credit is available in Rule 5 ibid. Though, the said rule has considered for grant of refund in case of exportation of goods or services, but in terms of judgement of Hon'ble Karnataka High Court in the case of Slovak India Trading Co. Pvt. Ltd. (supra), the accumulated cenvat credit is available for refund in absence of any express prohibition being contained in Rule 5 ibid. The modality for grant of refund of the excise duty is contained in Section 11B of the Central Excise Act, 1944. The relevant date of computation of the expiry period has been explained in Explanation-(B) appended to Section 11B ibid. Various circumstances for consideration of relevant date in the course of ongoing activities undertaken by a business establishment, have been elucidated therein. Since, closure of a factory is not a routine phenomenon, but happens in rarest occasion, the relevant date in context with the limitation for filing of refund application under such circumstances, cannot be reckoned by reading the Explanation clause provided in Section 11B ibid. In the case in hand, though the factory of the appellant was nonoperational for quite a long time, but it had continued to file the statutory returns before the authorities and finally surrendered the registration certificate. Immediately thereafter, since the accumulated cenvat balance lying in the books was claimed as refund, in my considered view, it cannot be said that such claim is barred by limitation of time. In other words, availment of cenvat credit is an indefeasible right of an assessee and such right conferred under the statue cannot be taken away on the ground of limitation. Further, Rule 5 ibid does not prescribe any time limit for grant of refund of the cenvat credit. Even if the time limit under Section 11B ibid is to applied, then logically it should be effective from the date of surrender of the registration certificate upon closure of the factory. The appellant in this case, since has filed the refund application within a reasonable time frame, from the date of closure of the factory, in my opinion, the same should not be denied on the ground of limitation, inasmuch as the purpose of the cenvat scheme would be defeated, if the benefits accrued in lawful manner is denied.

29.3 Therefore, I am of the considered view that the limitation aspect would not apply to the facts of the present case for denial of the refund benefit to the appellant.

30. In view of the foregoing discussions, I am in agreement with the learned Member (Judicial) that the impugned order is required to be set aside and the appeal is required to be allowed with consequential benefit to the appellant."

4. Further, we also find that by placing the reliance on the order passed in the case of *M/s ATV Projects India Ltd. (supra)*, co-ordinate Bench of the Tribunal in the case of *M/s Kinol Lubes Pvt. Ltd. Vs. Commissioner of Central GST & Central Excise, West Delhi – 2024 (10) TMI 1254 – CESTAT NEW DELHI*, has allowed the refund benefit in respect of unutilized CENVAT Credit available in the books of account on closure of the manufacturing unit.

5. In view of the above, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on

the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha