

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi - 110 066.

Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING/DECISION: 29/10/2014.

Excise Appeal Nos. 1307-1308 of 2011 (SM)

[Arising out of the Order-in-Appeal No. 58-59/BK/GGN/2011 dated 21/02/2011 passed by The Commissioner of Central Excise & Customs (Appeals), Delhi Ⅲ, Gurgaon.]

For Approval and signature: Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s P&P Overseas

Appellant

Versus

CCE, Delhi - III

Respondent

Appearance

Shri Hemant Bajaj, Advocate for the appellant.

Shri M.S. Negi, Authorized Representative (DR) for the Respondent.

CORAM : Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 54440-54441/2014 Dated : 29/10/2014

Per. Rakesh Kumar :-

The facts leading to filing of these two appeals are, in brief, as under.

1.1 The appellants are 100% EOU. They could not utilize the Cenvat credit for payment of duty on DTA clearances and since the accumulated Cenvat credit was attributable to the input services which had been used in or in relation to manufacture of the finished products which has been exported out of India, the appellants filed two claims for the period from July 2008 to September 2008 and October 2008 to December 2008 for cash refund of the accumulated Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. The refund claims were decided by Assistant Commissioner by two separate orders. In respect of refund claim for October 2008 to December 2008, the Assistant Commissioner disallowed the refund under Rule 5 of the Cenvat Credit Rules, 2004 to the extent of Rs. 1,82,298/- which represented the Cenvat credit taken in respect of CHA services availed for export of the goods and courier services used in connection with the manufacturing business of the appellants. Similarly, the Assistant Commissioner in respect of the refund claim for July 2008 to September 2008 disallowed the refund to the extent of Rs. 2,19,539/- which represented the Cenvat credit in respect of CHA services used for export of the goods and courier services used in connection with the manufacturing business of the appellants. These refund claims were disallowed on the ground that the CHA services and courier services are not eligible for Cenvat credit and secondly the export proceeds have not been received by the appellants. On appeal being filed to Commissioner (Appeals) against these orders of the Assistant Commissioner, the Commissioner (Appeals) by a common order-in-appeal dated 21/02/11 dismissed the appeals. Against this order of the Commissioner (Appeals), these two appeals have been filed.

2. Heard both the sides.

3. Shri Hemant Bajaj, Advocate, the learned Counsel for the appellants, pleaded that first ground for disallowing the refund claim under Rule 5 of the Cenvat Credit Rules is that the CHA services and courier services are not covered by the definition of input service, that this issue has already been decided by the Commissioner (Appeals) in the appellants' own case in the appellants' favour vide order-in-appeal No. 1-5/BK/DDDL/12 dated 02/01/2012, that the second ground of rejection is that the export proceeds have not been received, that

this condition is nowhere mentioned in the Notification No. 5/2006-CE (NT) dated 14/03/06 issued by the Government under Rule 5 of the Cenvat Credit Rules, 2004 and that in view of this, the denial of cash refund of the accumulated Cenvat credit under Rule 5 of the Cenvat Credit Rules, on the ground that the sale proceeds in respect of the goods exported has not been received is totally in correct and that in view of the above, the impugned order is not correct.

4. Shri M.S. Negi, the learned DR, defended the impugned order by reiterating the findings of the Commissioner (Appeals).

5. I have considered the submissions from both the sides and perused the records.

6. There is no dispute that the refund amount under Rule 5 of the Cenvat Credit Rules, 2004 which have been disallowed is in respect of the Cenvat credit availed in respect of CHA service availed for export of the goods and courier service availed in connection with manufacturing business of the appellant company. The department has denied the refund claims on the ground that the Cenvat credit in respect of these two services is not admissible. However, this issue stands decided in appellant's favour in the appellant's own case by the Commissioner (Appeals) vide order-in-appeal dated 02/01/12. In view of this, the first ground on which the refund claims have been denied would no longer be valid.

7. As regards the other ground for denial of the refund claims that the sale proceeds in respect of goods exported have not been received, it is seen that this condition is neither there in Rule 5 of the Cenvat Credit Rules nor this condition has been prescribed in the Notification No. 5/2006-CE (NT) issued under Rule 5 of the Cenvat Credit Rules. In view of this, the denial of refund claim on the ground that the export proceeds have not been received is not sustainable.

8. In view of the above, the impugned order is not sustainable. The same is set aside. The appeals are allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)

Member (Technical)