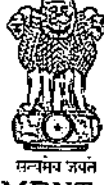


F.No.195/869/2013-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/869/2013-RA/2166

Date of Issue: 22.03.2021

ORDER NO. 144/2021- CX (WZ)/ASRA/MUMBAI DATED 16.03.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Asim Products

Respondent : Commissioner of Central Excise, Thane-II.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCEA-SRT-1/SSP-113/2013-14 dated 02.07.2013 passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-I

ORDER

This Revision Application is filed by the M/s Asim Product, Plot No. 215, GIDC, Pandesara, Surat (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CCEA-SRT-1/SSP-113/2013-14 dated 02.07.2013 passed by Comissioner (Appeals), Central Excise, Customs & Service Tax, Surat-I.

2. The issue in brief is that the Applicant, manufacturer was availing Cenvat credit under the Cenvat Credit Rules, 2004 and utilizing the same for payment of Central Excise duty on the goods cleared by them. The Applicant filed refund claim dated 19.04.2010 amounting to Rs. 2,20,478/- (Rupees Two Lakhs Twenty Thousand Four Hundred and Seventy Eight Only) in Form-R under the erstwhile Rule 173 S of the Central Excise Rules, 1944 on the grounds that Cenvat credit of Rs. 2,20,478/- remained unutilized due to export of goods under merchant exporter bond during the period from 2008-09 to 2009-10 and that since unable to utilize for payment of duty for the reason of closing of the manufacturing activity. The Assistant Commissioner, Central Excise & Customs, Division-III, Surat-I vide Order-in-Original No. SRT-III/Refund/955/2011-12 dated 27.03.2012 rejected the refund claim. Aggrieved, the Applicant filed an appeal before the Comissioner (Appeals), Central Excise, Customs & Service Tax, Surat-I, who vide Order-in-Appeal No. CCEA-SRT-1/SSP-113/2013-14 dated 02.07.2013 rejected their appeal on the grounds that the refund claim had been filed on account of closure of the unit and not on account of accumulation of Cenvat credit and that there is no provision for grant of refund of unutilized credit in Cenvat account

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Commissioner (Appeals) had failed to appreciate that even applying Larger Bench judgment in the case of Steel Strips reported in [2011 (269) ELT 257 (Tri.-LB)], the refund of accumulated credit for the goods

exported cannot be rejected which can be seen from the show cause notice that the present issue is for the refund of accumulated credit as a result of export of goods under bond. Thus, even applying the Larger Bench judgment and Supreme Court judgment in the case of Slovak, the refund is required to be allowed with consequential relief

- (ii) Finding of the Commissioner (Appeals) in para 6 to the effect that *"I find that the appellant has specifically mentioned in their grounds of appeal that the refund claim has been filed on account of closure of the unit and not on account of accumulated Cenvat Credit"*. This is not correct which can be seen from the para 2 of show cause notice dated 30.03.2011 which reads as *"The claimant has filed a refund claim amounting to Rs. 2,20,478/- on 19.04.2010 in Form R of the Central Excise Rules, 1944 on the ground that the Cenvat Credit of Rs. 2,20,478/-remained unutilized due to export of goods under merchant exporter bond during the period from 2008-09 to 2009-10 and that since unable to utilize for payment of duty for the reason of closing of the manufacturing activity."* Thus, the finding of Commissioner (Appeals) in para 6 is totally wrong and the judgment of the Supreme Court in the case of Slovank India and Larger Bench in the case of Steel Strips clearly apply for allowing the appeal with consequential relief.
- (iii) The lower authorities had grossly erred in not considering the judgment of the Supreme Court in the case of Slovank India Co. Pvt. Ltd. [2008 (223) ELT 170 (SC)] whereby the issue of refund of Cenvat Credit as a result of closure of unit was squarely decided. The lower authorities had erred in not taking into consideration the said judgment and even not giving any finding on the said issue which was squarely applicable and binding to the lower authorities. Thus, the orders of the lower authorities giving contrary finding then the law laid down by the Supreme Court in terms of the Rule 5 of Cenvat Credit Rules, 2004 and notification issued thereunder is without authority of law and therefore the said orders are required to set aside in the interest of justice allowing the refund claim along with interest.

- (iv) The lower authorities had also erred in not taking into consideration and not giving any finding the judgment of the Tribunal of Ahmedabad in the case of Commissioner of C.Ex., Ahmedabad Vs Rangdhara Polymers [2011 (264) ELT 275 (Tri.-Ahd.)] wherein it is held that the limitation under Section 11B is not applicable in the case of refund claim for accumulated credit under Rule 5 of Cenvat Credit Rules, 2004. In view of this also, the finding of the lower authorities contrary to law landing judgment is without authority of law and therefore the said orders are required to set side allowing the appeal along with interest as consequential relief in the interest of justice.
- (v) Even otherwise the other findings of the lower authorities to reject the rebate claims was not in accordance with law and merits of the case and therefore also the said orders are required to set aside allowing the appeal in the interest of justice.
- (vi) Since the lower authorities have disregarded by not following the order of the Supreme Court on the same issue, the interest at the applicable rate may please be awarded from the date of filing of the refund application dated 19.04.2010 and the cost of filing of the appeals Rs. 25000/-may be awarded in the interest of justice.
- (vii) The Applicant prayed that the refund application along with interest to pay the same within 30 days from the date of the order and the cost for filing of the present appeal be allowed.

4. A personal hearing in the case was held on 16.02.2021. Shri K.I. Vyas, Advocate appeared on behalf of the Applicant and none appeared on behalf of the Respondent. The Applicant reiterated the submission and promised to submit additional submission on the matter within a week.

5. The Applicant submitted their written submissions containing following grounds:

- (i) The manufacturing activity was closed from March 2010 and their Central Excise Registration was surrendered and therefore the accumulated credit lying in balance for export under bond was requested to refund vide their application dated 19.04.2010.
- (ii) It is fact on record in the show cause notice that the Applicant exported goods under bond and as a result the credit stand accumulated. At the same time due to adverse circumstances the Applicant was compelled to close down the business/manufacturing activities. In the circumstances, the refund application was made for the credit lying balance due to export under bond which the authorities had considered otherwise. Considering the very fact mentioned in para 2 of the show cause notice dated 30.03.2011, it was requested to remand the matter for consideration or allow the revision application considering various judgment on the issue.
- (iii) The issue involved in the present case for refund of accumulated credit due to closure of factory have been settled by Tribunal, High Court and Apex Court in various cases and after considering all judgments, the Hon'ble Tribunal, Ahmedabad in the case of Century Copper Rod Pvt. Ltd. in Excise Appeal No. 11299 of 2018 decided on 09.05.2019 have allowed the appeal. Applying the ratio of the said judgment is squarely applicable to the present Applicant and prayed to allow their application in the interest of justice.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of the records, Government observes that the Refund claim has been filed by the Applicant under the erstwhile Rule 173 S of the Central Excise Rules, 1944 on the grounds that Cenvat credit of Rs. 2,20,478/-

remained unutilized due to export of goods under bond during the period from 2008-09 to 2009-10 and that since they were unable to utilize the same for payment of duty for the reason of closing of their manufacturing activity.

8. The Government has examined the matter and it is found that the issue involved in the Revision Application is undisputedly regarding refund of accumulated Cenvat credit. Whereas, as per first proviso to Section 35B read with Section 35EE of the Central Excise Act, 1944, a revision application can be filed before the Central Government against the Order issued by the Commissioner of Customs (Appeals) under Section 35A of the Central Excise Act, 1944 only and that too when it relates to cases mentioned at (a) to (d) of first proviso to Section 35B of the Central Excise Act, 1994. The relevant provision is reproduced below:

Section 35B. Appeals to the Appellate Tribunal. -

(1)

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;*
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;*
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;*
- (d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No. 2) Act, 1998:*

Therefore, the Government considers that it does not have jurisdiction to deal with the Commissioner(Appeals)'s Order-in-Appeal No. CCEA-SRT-1/SSP-113/2013-14 dated 02.07.2013 which deals with refund claim filed by the Applicant on account of unutilized accumulated Cenvat credit due to export of

goods under merchant exporter bond during the period from 2008-09 to 2009-10 and that since they were unable to utilize the same for payment of duty for the reason of closing of their manufacturing activity.

9. In view of the above discussion, the Revision Application is not found maintainable before the Government and hence it is rejected.

Shrawan
16/3/21

(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 144/2021-CX (WZ)/ASRA/MUMBAI DATED 16.03.21

To,
M/s Asim Product,
A-101,
Vaishali Apartment, Near Elbee Cinema,
Bhatar Road,
Surat - 395 001

Copy to:

1. The Commissioner of CGST, New Central Excise Building, Chowk Bazaar, Surat -395 001
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Spare Copy.