

Precision Tool Room and Moulding Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-03-2007

Reported in : (2007)(116)ECC486

Judge : T Anjaneyulu

Appellant : Precision Tool Room and Moulding

Respondent : Commissioner of Central Excise

Judgement :

2. The issue involved in these appeals is that whether the appellants are entitled to claim the refund of accumulated Cenvat credit by way of cash in respect of the inputs against the exported goods.

3. The appellants herein have filed the refund claim for various amounts in these appeals, in terms of Rule 5 of the Cenvat credit Rules, 2002 on the ground that they were not in a position to utilize the accumulated credit as the quantum of their clearance for home consumption was low as compared to clearance to EOU without payment of duty. The adjudicating authority has rejected the refund claims while relying upon the condition No. 5 of Notification No. 11/2002-CE(NT) dated 01.03.2002 observing that Rule 5 has not been fulfilled. Further, it is observed that the appellants have effected export clearances against UT-I/Bond without payment of duty instead of payment of duty under Rule 18 of the Central Excise Rules, 2002, which has resulted in accumulation of Cenvat credit. Lastly, it is observed that the appellants have been clearing the goods for export and the accumulated credit

can be utilized for payment of duty on such export clearances under claim of rebate.

4. On carrying the matter in appeal before the Commissioner (Appeals), Central Excise, Pune, he has rejected the same while observing the following in para 5 & 6 - 5 I find that the appellants have not made out any case in their favour as to why the accumulated credit on which they have claimed refund could not be utilized by them. They have not shown that after exhausting all options they could not utilize the credit. They should have supported their case with facts & figures, showing the percentage of clearance for home consumption vis-is export to justify their claim. Further, I find that the adjudicating authority has rightly found that the accumulated credit could be utilized by them for clearance for export on payment of duty. Further, clearance for home consumption is an ongoing process and credit accumulated can be utilized for payment of duty on such clearances.

6. I also find that the ratio of judgment relied on by them can not be squarely applied as this being the case of Refund under Rule 5 of Cenvat Credit Rules, 2002, the facts and circumstances differ from case to case. Here, since the appellants have not justified their claim, by supplying facts & figures that their home clearance mere far too little than the export clearances, hence they could not utilize the credit, I find that the ratio's are not applicable.

5. The Id. Counsel for the appellants submits with regard to para 5 observations of the learned Commissioner while filing the refund application, various statements have been enclosed which shows the facts and figures- the receipt of goods, accumulated credit on that and the export of goods. These facts sufficiently shows the accumulation of credit which is not in their capacity to utilize the same. Whereas, the Commissioner (Appeals) has failed to appreciate the same. Further, it is put forth that where the situation arises of impossibility of utilization of accumulated credit, there is no option than to sanction the refund claim in cash. The support is drawn from the proposition laid down in the; judgment of Om Prakash Jayaprakash & Co. v. CCE, Surat 2004 (178) E.L.T. 429 (Tri.-Del.) and Gillete India Ltd. v. CCE, Delhi-III 2004 (175) E.L.T. 339 (Tri.- Del.) The first judgment is rendered with reference to deemed credit under Notification No.

29/96-CE (NT) dated 03.06.1995. The proviso to para 3 of the Notification No. 29/96-CE (NT) dt. 03.06.1996 is almost paramateria to Rule 5 of Cenvat Credit Rules. For this limit purpose the above judgment is relied upon, but the learned Commissioner could not understand the ratio laid down. The second judgment shows that Rule 57F(13) is paramateria of Rule 5 of Cenvat Credit Rules, 2002.

Similarly provisions of Rule 12 and Rule 13 of the erstwhile Central Excise Rules 1944 are paramateria with Rule 13 and Rule 18 of Cenvat Credit Rules, 2002. The ratio of the judgment is squarely applicable to the present case.

6. The Id. Counsel for the appellants also relied upon the latest judgment in the case of Navbharat Industries v. CCE, Thane-I , wherein it is held that "we agree with the Id.Advocate appearing for the appellant that the provisions of Rule 5 relating to refund of Modvat credit accumulated in the records on account of their non-utilisation for the exported goods is a beneficiary piece of legislation, the refund arising on account of the same can not be denied being a substantive right of the citizen. The wording of Rule 5 read with Rule 3 are very clear providing for refund of accumulated Modvat credit if the same can not be adjusted for any reason. As such the only condition in the said Rule is non-utilisation of the credit and no Jurisdiction vests in the Central Excise Officer to find out the reason for such non-adjustment. The use of the expression that "where for any reason" such adjustment is not possible, the manufacturer shall be allowed refund of such amount is an unlimited expression and can not be narrowed or curtailed down by the department authorities," 7. On examining the facts and circumstances of the case and applying the ratio in the aforesaid decision, I am of the considered opinion that both authorities below have erred in disallowing the refund claim made by the appellants. Claim has to be sanctioned on account of export of goods for which the credit can not be adjusted in the shape of duty payment, because the export of goods are duty free. In a such situation, there is no other alternative for the appellants, to claim their refund in cash. The authorities concerned can not circumvent the facts and circumstances of the case, while applying the Cenvat Credit Rules and turned down the reliance on applicable decisions. The issue is squarely covered by the aforesaid decisions and all the appeals are allowed while setting aside the impugned order with consequential relief.

