

**Bsl Limited Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/45211](http://sooperkanoon.com/45211)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-30-2007

**Reported in :** (2007)(118)ECC404

**Judge :** P Das

**Appellant :** Bsl Limited

**Respondent :** Cce

**Judgement :**

1. The appellant filed this appeal against the rejection of refund claim of Rs. 4,10,529/-. The appellant filed the refund claim on the ground that they were not in a position to utilize the cenvat credit in respect of AED (T&TA) paid on the inputs used in the manufacture of export goods. The appellant exported the goods and claimed rebate of duty under Rule 18 of the Central Excise Rules, 2002 in respect of basic excise duty. They filed refund claim on AED (T&TA) under Rule 5 of Cenvat Credit Rules, 2002 wherein rebate of duty was not availed.

The learned Advocate on behalf of the appellant submits that in the similar issue, the Tribunal in the case of CCE, Rohtak v. Indo Dane Textile Industries and Ors. vide final Order No. 288-293/07-SM(BR) dated 9.2.2007 dismissed the appeal filed by the Revenues.

3. The learned authorized representative (DR) on behalf of the Revenue submits that they have availed the rebate of duty in respect of the exported goods under

Rule 18 of Central Excise Rules, 2002 and, therefore, they are not entitled to claim refund of duty under Rule 5 of the Cenvat Credit Rules, 2002. He further submits that Rule 5 of the said Rules requires for the goods must have been exported either under bond or letter of undertaking. He also submits that Rule 5 provides that no refund of credit shall be allowed if the manufacturer claims rebate of duty under Central Excise Rules, 2002 in respect of such duty. He submits that the word "such duty" indicates in respect of inputs in question. It is his contention that the Rule 5 provides refund of duty when there is no scope for any reason adjustment of the duty in their modvat account.

4. After hearing both the sides and on perusal of the record, I find that the instant case is squarely covered by the decision of the Tribunal in the case of CCE Rohtak v. Indo Dane Textiles Industries and Ors.

No application for rebate of additional excise duty which was paid on the inputs, was made under Rule 18 read with Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act.

Therefore, an application for refund of such additional excise duty by way of cenvat credit in the account of the respondents could be made under Rule 5 of the Cenvat Credit Rules by these respondents.

They were not debarred under the proviso to Rule 5 of the Cenvat Credit Rules, because they had not claimed rebate of the additional excise duty under Rule 18, since no such claim could have been made, because no additional excise duty was payable in respect of the final product. Moreover, they also did not apply for rebate of the additional excise duty which was paid in respect of the inputs and for which modvat credit was taken. Therefore, an application under Rule 5 for refund of such cenvat credit was not hit by the proviso to Rule 5 in the case of these respondents. Since no question of execution of bond had arisen because, the exports were not made without payment of duty, as contemplated by Rule 9, the refund claim could not have been rejected on the ground that the bond was not executed. It is not the purpose of Rule 5 of the Cenvat Credit Rules to deny refund even in the cases in which the question of execution of bond cannot arise, when the inputs are used in the final products which are cleared for export or used in the

intermediate products cleared for exports, but for any reason, the adjustment of duty of excise on the final product cleared for export on payment of duty is not possible. In any event, there was no allegation in the show cause notice against the respondents as regards their having exported without bond, and hence the Commissioner (Appeals) was justified in not entertaining that ground canvassed by the Revenue.

The facts clearly disclose that the Commissioner (Appeals) was right in holding that there was ample evidence to show that the inputs were used in the final product which was exported on payment of duty. Under Rule 3(b) of the Cenvat Credit Rules, credit in respect of additional duties of excise leviable under Section 3 of the Additional Excise Duties (Textiles and Textile Articles) Act could be utilized towards payment of additional duty of excise leviable under that Act and, therefore, obviously, it could not have been utilized for paying the basic excise duty payable under the Central Excise Act, 1944 in respect of which rebate claim was separately made under Rule 18. The rebate claim was confined only to basic excise duty. Therefore, it did not debar the appellant from claiming refund of additional excise duty under Rule 5, since the cenvat credit relating to such duty could not be adjusted.

For the foregoing reasons, there is no warrant for interference with the impugned orders of the Commissioner (Appeals) which have been made on the basis of the material on record and for cogent reasons.

All the appeals are, therefore, dismissed.

5. It is seen from the record that the appellants have not filed any application for rebate of Additional Excise Duties (T&TA) and respectfully following the decision of the Tribunal, I allow the refund of AED (T&TA). However, I agree with the findings of the Commissioner (Appeals) in respect of rejection of the refund claim of Rs. 56,214/- as time barred. Therefore, refund claim of Rs. 3,54,315/- on AED (T&TA) is allowed and the appeal is otherwise rejected.