Chandra Cotton Fabrics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-07-2008

Reported in : (2008)(121)ECC15

Judge : K T P.

Appellant : Chandra Cotton Fabrics

Respondent : Cce

Judgement :

1. The captioned appeal has been filed by M/s. Chandra Cotton Fabrics (CCF), Tiruppur. In the impugned order the Commissioner (Appeals) affirmed the order of the original authority rejecting the claim for refund of Rs. 4,77,475/- in terms of Rule 5 of the Cenvat Credit Rules, 2002 (CCR). The claim relates to April and May, 2004. The appellant is engaged in the manufacture and export of fabrics. From the records it is seen that the finished goods of the appellants were entirely cleared for export. As the appellant was not in a position to utilize the accumulated cenvat credit for payment of duty for want of clearances to home market, they had claimed refund of the accumulated cenvat credit.

The lower authorities rejected the claim on the basis that in terms of Notification No. 11/02-CE(NT) dated 01.03.02, refund of credit of inputs used in the manufacture of final products cleared for exports under bond could be allowed, inter alia, when the manufacturer is not in a position to utilize the credit of the duty on inputs allowed under Rule 3 of the said CCR against goods exported during the quarter or month to which the claim relates. The authorities have taken a view that since the exports could be made on payment of duty under claim for rebate, an exporter cannot be held to be not in a position to utilize the credit of the duty on inputs allowed under Rule 3.

2. The Ld. Counsel for the appellants submits that the Notification issued under Rule 5 of CCR, deals with entitlement to refund of manufacturer exporters who export their final products under bond.

Therefore, the interpretation of the condition to allow the refund as the manufacturer not being able to export the goods on payment of duty adopted by the authorities is a patently erroneous reading of the notification. Rule 5 of the CCR provided that a manufacturer who exports his final products could utilize the input credit for clearance of final products for home consumption or for export on payment of duty, "where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount" subject to conditions prescribed by the Government. The condition of the Notification issued in this connection held against the appellants by the lower authorities does not bar refund of the accumulated credit.

The condition allows refund of credit to manufacturer exporters who cannot utilize the accumulated input credit for want of clearances for home consumption.Navbharat Industries v. CCE, Mumbai reported in 2. In the said decision, the Tribunal had held that refund of accumulated input credit was a substantive right of the citizen. Such credit accumulated on account of the finished goods being exported had to be refunded if the credit could not be adjusted for any reason. In the light of the above decision, the impugned order is not sustainable.

4. The Ld. SDR reiterates the reasoning contained in the impugned order.

5. I have carefully considered the facts of the case and submissions by both sides. Rule 5 of the CCR reads as follows: 5. Refund of CENVAT credit - Where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be

allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification: Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995 or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty.

The Notification No. 11/02-CE(NT) (supra) relied on by the lower authorities excerpted in the impugned order is reproduced below: In exercise of the powers conferred by Rule 5 of CENVAT Credit Rules, 2002 (hereinafter referred to as the said rules), the Central Government hereby directs that refund of CENVAT credit of specified duty allowed in respect of inputs used in or in relation to the manufacture of final products which are cleared for export under bond may be allowed subject to the safeguards, conditions and limitations, set out in the Appendix to this notification.

5. The refund is allowed only in those circumstances where a manufacturer is not in a position to utilize the credit of the duty on inputs allowed under Rule 3 of the said rules against goods exported during the quarter or month to which the claim relates." On a combined reading of Rule 5 and the said Notification, it is amply clear that when a manufacturer exports most of his production or entire production and does not have much clearances to the home market, he is not in a position to utilize the accumulated credit for adjustment towards duty payment. The statute specifically provides for grant of refund of the accumulated credit in such circumstances. Therefore, the stand taken by the lower authorities is contrary to law. In para 6 of Navbharat Industries (supra), the Tribunal observed as follows: We agree with the ld. 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-utilization for the exported goods is a beneficiary piece of legislation, the refund arising on account of the same cannot 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 cannot be adjusted for any reason. As such the only condition in the said Rule is non-utilization 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 cannot be narrowed or curtailed down by the departmental authorities.

The ratio of this decision supports the obvious reading that when the manufacturer exports his finished products under bond and is not in a position to utilize the credit for payment of duty on clearances for home consumption etc, the manufacturer is entitled to receive refund of the input credit periodically. In the circumstances, the impugned order is set aside and this appeal is allowed.