

(2016) 01 BOM CK 0194
In the Bombay High Court
Case No : Excise Appeal No. 2 of 2015

C.C., C.E. and S.T., Panaji	Vs	APPELLANT
Automobile Corporation of Goa Ltd.		RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Citation : (2016) 335 ELT 208

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Shri C.A. Ferreira, Advocate, for the Appellant; S/Shri Jitendra Jain and D. Pangam, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

F.M. Reis, J.— Heard Shri C.A. Ferreira, learned counsel appearing for the appellant and Shri Jain, learned counsel appearing for the respondent.

2. The above appeal filed under Section 35G of the Central Excise Act, 1944, challenging the Order dated 10-10-2013 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), whereby the appeal preferred by the appellant/Revenue came to be rejected.

3. Briefly the facts of the case as found from the records are that the respondents filed twenty quarterly refund claims during the period 5-3-2007 to 7-8-2010 for the exports made during the period February, 2006 to March, 2010. In these refund claims, the respondents claimed refund of Cenvat credit of duty paid on inputs (excluding chassis credit) for an aggregate amount of Rs. 28,89,30,788/-. The Central Excise Department issued separate show cause notice for each of the refund claim proposing to reject the aforesaid twenty refund claims on following ground :- (a) The respondents are availing Duty Drawback; (b) Accumulation of credit is not due to export goods; and (c) that the goods were cleared under CT-1 certificate. The aforesaid show cause notices were adjudicated by the Assistant Commissioner by passing various orders-in-

original and rejected the refund claims by confirming the allegations made in the show cause notices. Some of the claims were rejected on the grounds which were not even raised in the show cause notice. Thereafter, the respondents preferred an appeal before the Commissioner of Central Excise (Appeals), Goa. The Commissioner (Appeals) vide Order-in-Appeal dated 10-6-2008 set aside all the objections raised in the notices and remanded the matter for quantification of claim by verifying the relevant documents. Thereafter, the Assistant Commissioner passed an Order rejecting the refund claims without referring to the Orders issued by the Commissioner (Appeals) on the grounds raised in the earlier Orders. The respondents filed an appeal before the Commissioner (Appeals) against the aforesaid Orders which the Commissioner disposed of by an Order dated 20-1-2010 rejecting the appeals preferred by the respondents by taking an altogether new and sole ground that the respondents are not the manufacturer and, therefore, cannot file refund claim under Rule 5. But, however, the Commissioner (Appeals) gave up the objections raised by the Department in the show cause notices and Orders in the original. The respondents, therefore, filed an appeal before the CESTAT against the portion of the Order-in-Appeal dated 20-1-2010 which was against them. The Department did not file any appeal against the portion of the Order-in-Appeal dated 20-1-2010 which was against the Department. The CESTAT by an Order dated 8-9-2011 [2013 (31) S.T.R. 496 (Tribunal)], allowed the appeal of the respondents by holding that the respondents are manufacturers and, can therefore, file a refund claim under Rule 5. The CESTAT, however, remanded the matter to the Commissioner (Appeals) to decide the refund claims for verification. The Commissioner (Appeals) vide Order-in-Appeal dated 23-9-2011 held that the refund claims are eligible in terms of Rule 5 and, accordingly, directed the Lower Authority to process and sanction/grant the refund claims after verification the quantum claimed. Thereafter, the claims were verified by the Superintendent and a report was submitted to the Assistant Commissioner. The Assistant Commissioner thereafter by an Order dated 28-9-2012, sanctioned the refund claim by rejecting Rs. 10.24 lakh stating that this portion alone was time-barred. The total refund as such sanctioned to the respondents was to the tune of Rs. 28.79 crores. The Revenue/appellants herein, filed an appeal against the aforesaid Order dated 28-9-2012 before the Commissioner (Appeals) on new grounds which were never ever raised earlier. The respondents filed written submissions before the Commissioner (Appeals) and the respondents proved that each of the grounds taken by the department in their appeal are factually incorrect. The respondents also contended that the grounds taken by the Department are irrelevant. The Commissioner (Appeals) by an Order dated 22-3-2013, rejected the appeal filed by the Revenue/appellant herein. After considering all the facts and circumstances, the Commissioner (Appeals) held that the ground taken by the Revenue in appeals are not correct since the pre-audit verification was completed in favour of the respondents and the grounds were factually incorrect. The Revenue/appellant herein, thereafter preferred an appeal against the aforesaid Order before the CESTAT on the very same grounds

which were rejected by the Commissioner (Appeals). The CESTAT by the impugned Order dated 10-10-2013, rejected the appeal of the Revenue. Being aggrieved by the said Order, the appellants have preferred the said appeal.

4. We have heard Shri C.A. Ferreira, learned counsel appearing for the appellants and Shri J. Jain, learned counsel appearing for the respondent. With the assistance of the learned counsel, we have also gone through the Orders passed in the above proceedings. On perusal of the impugned Order, we find that the learned Tribunal has noted that the contention of the appellants was that though the refund was being adjudicated under Rule 5 of the Cenvat Credit Rules, 2004, nevertheless, the safeguards and the conditions mentioned therein were not being examined. It was further contended that the adjudicating authority has not verified whether the respondents have fulfilled all the conditions laid down in such notification. It was further the contention of the appellants that even these aspects were not examined by the Appellate Authority. The learned Tribunal thereafter noted the different rounds of litigation which the parties had gone into in respect of the subject refund Order and found that the claim of the respondents under Rule 5 of the Cenvat Credit Rules, 2004, were correctly allowed. It was further noted that such refund accumulated credit on which inputs/input services can be refunded to the manufacturer in respect of export goods in case the assessee is not able to utilize the same. The learned Tribunal also noted that in Order dated 28-9-2012, passed by the Assistant Commissioner it has been categorically stated that all claims were verified by the Range Office and upon scrutiny of the refund claim to the tune of Rs.10,24,918/-, were time-barred as the claim was not filed within one year from the date of export. It was further noted that the Range Office also confirmed that accumulated Cenvat credit pertains to the inputs used in the manufacture of export goods and the respondent/assessee has not been able to utilise the credit as they have not paid any duty through PLA right from January, 2006 to June, 2012. The learned Tribunal also noted that it was further found in the said Order that all necessary documents were submitted by the respondents in the Range Office and, accordingly, found that the refund claim to the tune of Rs. 28,79,05,870/-, deserves to be allowed. The learned Tribunal also noted the Order passed by the Appellate Authority which had also upheld the sanction of refund and rejected the appeal of the Revenue-appellant herein.

5. On perusal of the impugned Orders, the contention of the Revenue-appellant herein that the respondent were not manufacturers, came to be rejected. It was also found that the refund was being claimed in respect of the inputs used in the manufacture of final products which were exported. This was based on the certificate of the chartered accountant who has also certified to that effect. During the course of the hearing, it was also claimed by the learned counsel appearing for the respondents, that they were not making any claim in respect of credit availed on input services but only on credit availed on inputs and further contended that the average export clearance is less than 50% of the total clearance during the subject period and, consequently, there was no merit in the

above appeal. The learned counsel appearing for the appellant, did not dispute the factual correctness of the said contention.

6. In view of the above, we find no merit in the above appeal nor there is any perversity in the findings of fact arrived at by the authorities below. There is no violation of Rule 5 of the Cenvat Credit Rules, 2004 as sought to be contended by the appellant. Hence, the appeal stands rejected.