
(2021) 02 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 11692 Of 2017

**Enpay Transformer Components India Pvt Ltd @Hash C.C.E. And S.T.-
Vadodara-I**

Date of Decision : 23-02-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 3(5A)

Citation : (2021) 02 CESTAT CK 0031

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Advocate : Keyur P Sheth, Vinod Lukose

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant had imported certain capital goods under duty free EPCG scheme in the year 2011. The said

capital goods after being put to use were re-exported and the appellant had paid Rs.1,96,33,568 under the head of Custom Duty and later on availed

Cenvat Credit of the said custom duty in the month of March, 2014 and September, 2014. During Audit, on scrutiny of various challans under which

custom duty was paid (On re-exportation of capital goods), it was observed that the said amount paid as custom duty were in fact payments made

against pending dues and not for the bills for the purpose of payment of custom duty. Hence the audit has raised the objection on availment of Cenvat

credit. The appellant agreed with the audit objection and reversed the credit however, subsequently vide letter dated 30.11.2015 to the Assistant

Commissioner audit claim to have made above debit/paid "under protest". Also they claim that they are eligible for depreciation in terms of Rule

3(5A) of the Cenvat Credit Rule, 2004 and requested re-credit which however denied as the appellant had failed to fulfill the EPCG obligation and he

was required to pay the custom duty as per custom authorities direction and this custom duty and cess are ineligible for credit under Cenvat Credit

Rules, 2004. Based on the said audit objection the Show Cause Notice 07.12.2015 was issued. The show cause notice had been adjudicated by the

Order in Original dated 25.11.2016. Being aggrieved with the said Order in Original, the appellant filed the appeal before the Commissioner (Appeals),

who vide the impugned order upheld the Order in Original in toto and rejected the appeal filed by the appellant before him. Therefore, the present

appeal.

2. Shri Keyur .P. Sheth appeared on behalf of the appellant, he filed synopsis dated 24.11.2020. He argued the case in detail and subsequently filed a

written submission dated 03.12.2020 and he has also filed the rebuttal against the additional submission filed by the revenue on dated 07.12.2020. The

Learned Authorized Representative Shri Vinod Lukose, Superintendent (Authorized Signatory) also argued case in length and he has also submitted

the written submission dated 01.12.2020 and 3.12.2020.

3. We heard both sides and considered all the submission made by both the sides. We find that facts of the case is not under dispute that though the

appellant had imported duty free capital goods under EPCG but subsequently the same was re-exported after being put to use for substantial time. The

appellant claimed the Cenvat Credit in respect of the duty paid on reexportation of the capital goods. The Lower Authorities have denied the Cenvat

credit on the ground that as per Rule 3(5A) there is no provision to clear the capital goods without payment of duty for export. We are of the prima

facie view though there is no mention about export of capital goods in rule 3(5A) but in general any export of goods does not attract duty as the export

goods can be cleared either under bond or under claim for rebate. The appellant has relied upon the various judgment wherein the issue of payment of

duty in terms of Rule 3(5A) has been dealt with in respect of export goods. However both the lower authority have not dealt this situation in detail,

after considering the relevant judgment on the issue. The appellant also vehemently argued that even if Cenvat credit is not available, since the goods

have been exported the appellant are entitled for rebate claim. We find that this is a vital issue raised by the appellant before the Adjudicating authority

as well as the Commissioner (Appeals) .The same should have been considered

in detail and proper finding should have been given however, both the authorities failed to properly consider the issue of rebate claim in accordance with law.

4. In view of our above view we find that the both the authorities have not considered the overall issue on the basis of the legal provision and also on the various judgments based on this issue therefore, in the interest of justice the only option left for us is to remit the matter back to the Adjudicating

Authority for considering all the issues and pass a reasoned order. The appellant must be given opportunity to make their submission and also for

personal hearing.

5. The impugned order is set aside and appeal is allowed by way of remand to adjudicating authority. Since the matter pertains to the year 2011, the

adjudicating authority shall pass the de novo adjudication order within a period of 3 Months from the date of this order.

(Pronounced in the open court on 23.02.2021)