(2021) 04 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41292, 41293, 41294, 41295, 41296, 41297, 41298 Of 2019

M/s.Unlimited Innovations [India] Pvt. Ltd., APPELLANT

Vs

Commissioner Of CGST And CE, RESPONDENT

Date of Decision : 13-04-2021

Acts Referred:

Cenvat credit Rules, 2004 — Rule 5
Central Excise Act, 1944 — Section 11B

Citation : (2021) 04 CESTAT CK 0035

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : N. Viswanathan, Arul C. Durairaj

Final Decision : Allowed

Judgement

1. The above appeals have been filed by the appellant aggrieved by the rejection of refund claim filed under Rule 5 of Cenvat Credit Rules, 2004.

2. On behalf of the appellant, the learned counsel Shri N. Viswanathan appeared and argued the matter. He referred to the table in para1 of the impugned order and submitted that in the above six appeals the refund has been rejected for reason that it is timebarred. In fact, the appellant had filed the refund claims with the period of one year prescribed under section 11B of Central Excise Act, 1944. However, after scrutiny of the refund claims, the department reiterated the same, requesting the appellant to rectify certain discrepancies and also furnish documents. As per these directions, the refund claims were re-submitted on different dates. The authority below has considered the date of re-submission as date of filing the refund claim, which is erroneous. He argued that date of filing of refund claim originally has to be taken into consideration for computing the limitation. To support the arguments, he relied upon the judgement in the case of M/s. United Phosphorous Ltd., Vs Union of India reported in 2005 (184) E.L.T.240 (Guj.) and in the case of Sudha Ramachandran Vs Union of India

reported in 2011 (24) S.T.R.175 (Ker.).

3. The issue in Appeal No.ST/41298/2019 is with regard to non-compliance 2(g) of Notification No.07/2012-CE(NT), dated 18.06.2012. As per this clause, balance in Cenvat account should be below the claim for quarter. The appellant has to debit in the Cenvat account the amount that is claimed as refund. He adverted to page no.246 of the appeal paper book and submitted that the appellant has furnished the ST-3 returns for the relevant quarter, which would evidence the debit of the Cenvat credit for which refund claims have been submitted. He prayed that the matter may be remanded for consideration on merits.

4. The learned Authorised Representative Shri Arul C. Durairaj supported the findings in the impugned order.

5. Heard both sides.

6. On perusal of the table given in para 1 of the impugned order, it is established that the authorities below have computed the period of limitation from the date of re-submission of the refund claims. This is against the provisions of law. The date on which the refund claims has been originally submitted is the relevant date that has to be reckoned for computing the limitation of one year. The decisions placed by the learned counsel also have held that the date of resubmission cannot be taken for computing the limitation. When computed in such a manner, all these refund claims are well within time. The finding in the impugned order that these refund claims are time-barred is, therefore, set aside.

7. The issue in Appeal No.ST/41298/2019 is that the appellant has not debited the amount in their Cenvat Account prior to filing of the refund claim as required under clause 2(h) of the said notification. The rejection is on the allegation that the balance in the Cenvat Account has been brought below the refund claim and, therefore, is not in compliance with Rule 2(g) of the said notification. When the debit made by the appellant as evidenced by the ST-3 returns is considered, it would show that both clauses 2(h) as well as 2(g) has been complied. For these reasons, I find that the rejection of the refund claim for the period April, 2017 to June, 2017 is not sustainable. The same requires to be set aside, which I hereby do.

8. All the refund claims are to be processed on merits by the authorities below. For this purpose, the appeals are allowed and the Refund Sanctioning Authority is directed to process the refund claims on merits. The appeals are allowed in the above terms.

(Dictated and pronounced in open court)