(2021) 12 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 11957, 11958, 11959 Of 2018

Shirpur Gold Refinery Ltd — APPELLANT

Vs

C.C.E. -Ahmedabad-I — RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 4(7), 5, 9, 9(2)
Service Tax Rules,1993 — Rule 4A

Citation : (2021) 12 CESTAT CK 0031

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. These appeals are directed against the orders in appeal passed by Commissioner (Appeals) which are impugned in the present appeals. The issue

involved is that whether the appellant is entitled for the refund claim under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27 of 2012-

CE (NT) dated 18.06.2012 in respect of Cenvat Credit availed on Banking and Financial Services and Insurance Services used for export of finished

goods i.e. Gold Jewellery. In all the appeals common issues are involved, therefore, these appeals are taken up together for disposal. The Learned

Commissioner (Appeals) upheld the rejection of the refund claim ordered by the adjudicating authority on the following grounds:

i) Refund is governed by Notification No. 41/2007-ST hence, the condition of the Notification was not fulfilled such as time limit prescribed therein.

ii) The documents in respect of insurance service are not in the name and address of the appellant but in the name and address of Mumbai Office.

iii) No evidence has been produced to substantiate that credit taken on service tax paid on Commission of Bank Guarantee and on Insurance Service

pertains to manufacture and export of finished goods.

iv) The documents are lacking vital details, therefore, inadmissible for taking credit in terms of Rule 4A of Service Tax Rules ,1993 read with Rule

4(7), Rule 9(2) of Cenvat Credit Rules, 2004.

On the above grounds, the refund was rejected by the Learned Commissioner (Appeals), therefore, the present appeals filed by the appellants.

2. Shri Jigar Shah, learned counsel appearing on behalf of the appellants submits that Learned Commissioner (Appeals) has erred in holding that the

refund claim is governed by Notification 41/07-ST whereas at the relevant time the said Notification was not existing. The appellants have correctly

filed the refund claim under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012, therefore, the

condition of Notification 41/07-ST cannot be imported at appellate stage for rejecting the claim. He without prejudice submits that even if it is assumed

that refund should have been filed under Notification 41/2012-ST, the appellant has complied with all the conditions prescribed in the said Notification,

therefore, in any case, refund could not have been rejected. He submits that the subject input services, i.e. Banking and Financial Services were

indeed used in relation to export of the finished goods. Moreover, issue of nexus of the input service with output service cannot be made a ground for

rejection of refund claim. Had the department of the view that the credit is not admissible, a separate show cause notice could have been issued for

proposing the denial of the cenvat credit which was not done so far, therefore, at the stage of refund, admissibility of the Cenvat credit cannot be

questioned as held by this CESTAT Mumbai Bench in the case of Warburg Pincus India Pvt. Ltd. Vs CST Mumbai 2018 (364) ELT 159 (Tri.-Mum.).

He submits that refund is correctly admissible to them even if the invoices are in the name of Mumbai office, in view of the following judgment:

â?¢ Madhya Pradesh Consultancy Organisation Ltd vs CCE 2017 (4) GSTL 100 (T)

â?¢ Unicure India Ltd. Vs CCE 2017 (3) GSTL 418 (T)

â?¢ CCE vs Chamundi Textile (Silk Mills) Ltd. 2011 (270) ELT 531 (T)

2.1 Alternatively, he submits that the Mumbai Office would have distributed the credit to the Ahmedabad office in accordance with Rule 7 of Cenvat

Credit Rules 2004, therefore, denial of credit on the ground that invoices are in the name of Mumbai office is incorrect. The input service distributor

invoice is only the procedural requirement and for the lapse of such procedure credit cannot be denied. He placed reliance on the following

judgements:

â?¢ Doshion Ltd. Vs CCE 2013 (288) ELT 291 (T) which are upheld by the Honâ??ble Gujarat High Court reported at 2016 (41) STR 884 (Guj.)

â?¢ Bushan Power & Steel Ltd. 2017 (52) STR 305 (T)

2.2 As regard the discrepancy pointed out by the learned Commissioner (Appeals) in the cenvat document, he submits that the documents are clearly

eligible in terms of Rule 4A of Cenvat Credit Rules, 2004 read with Rule 9 of Cenvat Credit Rules, 2004 as all the required information are appearing

in the document, therefore, the document is clearly as per in terms of Rule 4A of Service Tax Rules, 1994 read with Rule 9 of Cenvat Credit Rules,

2004.

2.3 He further submits that the cenvat credit was taken in respect of Insurance Service only to the extent it pertains to export from Ahmedabad

factory, therefore, the Commissioner (Appeals) has erred in holding that the appellants have failed to produce evidences to show that the impugned

services were used in relation with the goods manufactured and exported from their registered office at Ahmedabad.

2.4 Similarly in respect of the Banking/ Financial Services also, the credit was taken only to the extent of Gold which was used in the manufacture of

jewellery items which were exported from Ahmedabad office.

2.5 He without prejudice further submits that the impugned services were used in relation to manufacture of finished goods which were exported and

therefore, it is irrelevant whether service pertains to Ahmedabad Unit or Dholera Unit. He submits that in view of above submission, the order passed

by Learned Commissioner (Appeals) is incorrect and illegal on facts as well as legal points, therefore, the same deserves to be set aside and appeal be

allowed.

3. Shri Vinod Lukose, learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned

order.

4. I have carefully considered the submissions made by both the sides and perused the records.

5. I proceed to deal with the reasons for rejection of refund claim given by the Learned Commissioner (Appeals). As regard the contention of the

Learned Commissioner (Appeals) that the refund is governed by Notification 41/07-ST, I find that the appellant is correct in submitting that at the

relevant time this Notification was not in existence, therefore, it is wrong on the part of the Learned Commissioner (Appeals) to import and apply the

non-existent notification.

6. I find that the appellants have claimed the refund in respect of the input service used in relation to export of finished goods, therefore, the refund is

correctly governed by Rule 5 read with Notification No. 27 of 2012-CE(NT), therefore, rejection of refund referring to Notification 41/2007-ST is

absolutely incorrect being not relevant.

7. The learned Commissioner (Appeals) also given finding for rejection of the claim that the cenvat document is not in the name of the appellant but in

the name of their Mumbai Office. I find that Mumbai Office is not an independent entity and not carrying out a business separately. The Mumbai

office is working solely for the manufacturing unit of the appellant company, one of the factories is the appellant Ahmedabad Factory. It is the

submission of the appellant that they have taken credit only to the extent it is related to Ahmedabad Factory, therefore, even if the document is bearing

the name and address of the Mumbai office, only on this ground, refund cannot be rejected since service is attributed to the appellantâ??s factory.

Therefore, on this ground also, the learned Commissioner (Appeals) has erred in denying the refund. This issue is settled in the judgement cited by the

appellant in their submission i.e. Madhya Pradesh Consultancy Organisation Ltd vs CCE 2017 (4) GSTL 100 (T), Unicure India Ltd. Vs CCE 2017 (3)

GSTL 418 (T) and CCE vs Chamundi Textile (Silk Mills) Ltd. 2011 (270) ELT 531 (T).

8. As regard the contention of the Learned Commissioner that there is no evidence that the Bank Commission and Insurance Service were used in

relation to export of goods by the appellant. I find that the appellant has made a categorical submission that they have taken credit in respect of the

Banking Commission and Insurance Service only to the extent the goods exported from their Ahmedabad Factory on proportionate basis, therefore,

this finding of the learned Commissioner (Appeals) that there is no evidence has no basis and is not acceptable.

9. As regard the issue that whether documents on which the cevnat credit was taken are proper in terms of Rule 4A of Cenvat Credit Rules, 2004

read with Rule 9(2) of Cenvat Credit Rules, 2004. I find that the appellants have produced the invoices on which cenvat credit was taken and, on

going through the invoices, I find that all the details as required in terms of Rule 4A read with Rule 9 of Cenvat Credit Rules, 2004 are appearing in the

invoices. As regard the Financial Services, the amount shown is consolidated amount inclusive of service tax, therefore, the appellant has bifurcated

the said amount into the gross value and in the service tax amount, I do not find anything incorrect in doing such bifurcation. The documents are

correctly bearing all the information required, therefore, the cenvat documents are in confirmation to Rule 4A and read with Rule 9 of Cevnat Credit

Rules, 2004. Therefore, on all the counts on which the Learned Commissioner (Appeals) denied the refund claim, the impugned order is not

sustainable. Accordingly, the impugned orders are liable to be set aside and I do so. Appeals are allowed with consequential relief.

(Pronounced in the open court on 09.12.2021)