

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Tax Appeal No. 11986 of 2013- DB

(Arising out of OIA-185/2013/RAJ/CE/AK/COMMR-A/AHD dated 25/04/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

Suraj Ropes

Plot No. 9, S. No. 267,
Shapar, Taluka : Kotada Sangani,
Rajkot, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

.....Respondent

APPEARANCE:

Shri, R. Subramaniya, Advocate for the Appellant

Shri, Tara Prakash, Assistant commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. A/11321/2023

DATE OF HEARING: 02.03.2023
DATE OF DECISION: 23.06.2023

RAMESH NAIR

This appeal is filed against the Order-in-Appeal No. 185/2013(RAJ) CE/AK/Commr(A)/Ahd dated 25.04.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The brief facts of the case are that appellant is registered with the Central Excise department and filed a refund claim with jurisdictional Assistant Commissioner in respect of amount of Cenvat credit which they could not utilize by the time they closed the factory and surrendered their registration. The application for refund was rejected by the jurisdictional Assistant Commissioner by his order dated 24-08-2012 on the grounds that no provision regarding the cash refund of unutilized Cenvat Credit at the time of surrender of Central Excise Registration is available under Cenvat Credit Rules or Central Excise Rules. Aggrieved, the appellant filed appeal before the appellate authority, who vide impugned order upheld the order of the lower authority and rejected the appeal. Hence this appeal.

3. Learned Counsel Shri R. Subramaniya appearing on behalf of appellant submits that due to closure of factory the appellant are not in position to utilize the accumulated cenvat credit balance, and hence they had made an application for refund of the accumulated cenvat credit lying as on 11.04.2012.

3.1. He further submits that the goods cleared for domestic buyers were on payment of duty, and some quantity of raw materials were also cleared as such on reversal of the proportionate cenvat credit. The export under claims of rebate was also made on payment of duty. Therefore, whatever accumulation that has occurred, is only for the reason of export under bond/LUT, and secondly because of the difference in rate of excise duty on the raw materials as compared to the excise duty on the final products.

3.2. He also submits that the Rule 5 provide for refund when the amount of unutilized credit cannot be utilized for payment of excise duty/ service tax, the refund is to be granted. There is no express prohibition in granting the refund of the unutilized credit.

3.3 He further argued that the amount which is lying in the cenvat credit account and which cannot be utilized on account of the closure of the factory is liable to refunded. He placed reliance on the following judgments:

- UOI Vs. Slovak India Trading Co. Pvt. Ltd. – 2008(223) ELT A170
- Kundlia Industries Vs. CCE, Delhi-I -2006(196) ELT 312 (Tri. Del)
- Tables India Ltd. Vs. CCE, Pondicherry -2006(197) ELT 449 (Tri. Chennai)
- STL Products (P) Ltd. Vs. CCE, Bangalore – 2006(198) ELT 521 (Tri. Bang.)
- CCE, Kanpur Vs. Deepti Chemicals (P) Ltd. -2006(201) ELT 423 (Tri. Del)
- CCE Pondicherry Vs. FAL Industries Ltd. -2006(196) ELT 109 (Tri.- Chennai)
- CCE, Ranch Vs. Ashok ARC – 2006(193) ELT 399 (Jhar,)
- Vardhaman Fabrics Pvt. Ltd. Vs. CCE, Surat –I – 2006(196) ELT 31 (Tri. Mumbai)
- A.G. Export Industries Vs. CCE, Bangalore – 2007(212) ELT 421 (Tri. Bang)

- CCE, Bhopal Vs. Bombay Burmah Trading Corpn. Ltd. -2005(190) ELT 40 (Tri. Del)
- CCE, Ahmedabad -I Vs. Arcoy Industries – 2004 (170) ELT 507 (Tri. Mumbai)
- CCE Vs. Kores India Ltd. – 2009(245) ELT 411 (Tri. Bang.)
- CCE Vs. Jai Ganpati Metals – 2015(322) ELT 730(Tri.)
- Bangalore Cables Pvt. Ltd. Vs. CCE – 2017(347) ELT 479 (Tri. Chennai)
- Welcure Drugs & Pharmaceuticals Ltd. Vs. CCE – 2018(15) GSTL 257 (Raj)

4. On other hand the Learned Departmental Representative Shri, Tara Prakash, Deputy Commissioner(AR) reiterated the findings of impugned orders.

5. We have considered the rival submissions and perused the records.

5.1 We find that in the present matter the appellant has taken specific stand that due to difference in rate of duty on inputs and finished goods and export of goods under Bond and LUT, the cenvat credit get accumulated and it was not possible for them to adjust the said CENVAT credit due to closure of the their manufacturing activity and subsequently surrendering their central excise registration certificate. We note the adjudicating authority in the impugned matter observed that the refund of the appellant does not fall under any of the rules and that there are no express or implicit provisions in the Central Excise Act and Cenvat Credit Rules for grant of refund of Cenvat credit balance lying unutilized at the time of closure of the unit. However, we find that in case of export of goods under bond and LUT without payment of duty, manufacturer is entitled to claim refund of cenvat credit accumulated unutilized on export of finished goods. However the said facts require verification, therefore without giving any finding on merit on the disputed refund claim we remand the matter back to the original authority for deciding the impugned matter afresh.

5.2. While remanding the matter we make it clear that we are not expressing any opinion on the merits of any issue in the matter and keep all the issues open for the consideration.

6. In view of above, appeal is allowed by way of remand to the original adjudicating authority to decide the matter fresh after providing the opportunity of personal hearing to the appellant.

(Pronounced in the open court on 23.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha