

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20057 of 2021

[Arising out of No. COC-EXCUS-000-APP-216-2020 dated
28/07/2020 passed by Commissioner of Central Tax ,
COCHIN(Appeal)]

Tata Consumer Products Ltd.

Tata Tetley Division No 73 K P K Manson
Road Willingdon Island
KOCHI
KERALA
682003

Appellant(s)

VERSUS

**Commissioner Of Central Tax &
Central Excise, Cochin**

C.R. Buildings, I.S Press Road
Cochin
Kerala
682018

Respondent(s)

Appearance:

Shri Abraham Markos, Advocate for the Appellant
Shri Rama Holla, Superintendent(AR) for the respondent.

CORAM:

HON'BLE SHRI P DINESHA, JUDICIAL MEMBER

Final Order No. 20093 /2022

Date of Hearing: 07/03/2022

Date of Decision: _11/03/2022

Per : P DINESHA

The brief facts leading to the present appeal, which are relevant for my consideration, are that the appellant is a 100% EOU engaged in the manufacture and export of tea bags and packet tea; they had filed refund claim dt. 18/09/2015 for an amount of Rs.14,11,916/- for the period April 2015 to June 2015 under

Notification No.27/2012-CE(NT) dt. 18/06/2012 for refund of cenvat credit availed on input services used for the manufacture of final products, which were cleared for export under bond. The Assistant Commissioner in the Order-in-Original dt. 29/01/2016, having observed that the appellant was eligible for refund of Rs.13,95,891/-, but, however, sanctioned only an amount of Rs.10,60,268/- by rejecting the balance amount of Rs.3,51,648/-. Against the rejection, the appellant had approached the First Appellate Authority, wherein, inter alia, the appellant had pleaded that they had inadvertently mentioned the balance cenvat credit available as on the date of filing its refund claim as Rs.10,60,268/- as against the actual Rs.14,50,277/-. In support, the appellant had also submitted the extract of their ledger indicating the exact amount lying in their cenvat credit account as on 15/09/2015. The Commissioner(Appeals), Central Tax, Central Excise and Customs, Cochin, vide the impugned Order-in-Appeal No.COC-EXCUS-000-APP-216-2020 dt. 28/07/2020 has rejected the refund claim and hence the appellant is before this forum.

2. Heard Shri Abraham Markos, learned advocate for the appellant and Shri Rama Holla, learned Superintendent(AR) for the Revenue. I have considered the rival contentions as well as

decisions/orders referred to during the course of arguments.

3. From a perusal of the impugned Order-in-Appeal, I find that though the appellate authority has taken note of the claim of the appellant as regards the inadvertent/clerical error, but has not accepted on the ground that the same was not brought to the notice of the adjudicating authority. It is not the case therefore that the error was not inadvertent, the rejection is for different reason and hence it is clear that the inadvertent error is bona fide and on this, the First Appellate Authority should have called a report from the adjudicating authority and then passed appropriate order as per law. I am therefore of the view it would meet the ends of justice if the matter is sent back to the file of the adjudicating authority who shall verify the inadvertent error which is not disbelieved by the First Appellate Authority, who shall also verify the closing balance in the cenvat credit as on the date of appellant's claim, as appearing in the appellant's books.

4. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand. The adjudicating authority shall pass a speaking order as per my observations hereinabove, preferably within a period of 3 months considering the fact that the issue pertains to the period April 2015 to June 2015. While passing a speaking order as per my

directions, the adjudicating authority shall give sufficient/reasonable opportunities to the appellant of being heard. All the contentions are left open. Appeal is allowed by way of remand.

(Order pronounced in the
Open Court on **11/03/2022**)

(P DINESHA)
JUDICIAL MEMBER

Raja...