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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12458 of 2013-SM

(Arising out of OIA-SRP/53/DMN/2013-14 dated 01/05/2013 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Alkem Laboratories Ltd **........Appellant**

Plot No. 333/1,, Silicon Industrial Estate, Kachigam,
Daman, Gujarat

VERSUS

C.C.E. & S.T.-Daman **.......Respondent**

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:

Shri. Mahesh Raichandani & Shri. Anshul Jain, Advocates for the Appellant
Shri. Vijay G Iyengar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12210 /2022

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 08.12.2022

Raju

This appeal has been filed by M/s. Alchem Laboratories against denial of refund claim filed under Rule 5 of the Cenvat Credit Rules, 2004.

2. Learned counsel for the appellant pointed out that they were contract manufacturing for principal manufacturer namely GALPHA LABORATORIES LIMITED. They are filed a claim for refund on account of accumulated Cenvat credit under Rule 5. The appellant are maintaining separate records for the said principal manufacturer or in terms of the contract with the principal manufacturer they were required to do so. The principal manufacturer had also put a condition that the appellant should not debit PLA/MODVAT account except for any reason without the consent of GALPHA. Learned counsel argued that the refund has been denied holding that it was possible for the appellant to use the Cenvat credit and the condition of Rule 5 of the Cenvat Credit Rules is not fulfilled. The impugned order holds that if it is possible for the appellant to use the cenvat credit then the refund under Rule 5 cannot be allowed.

2.1 Learned Counsel pointed out that the Annexure 11 to 11G containing the details of Cenvat credit related to the goods exported on account of GALPHA. Learned Counsel pointed out that the duty structure on such that

the duty on the finished goods was much lower than that on the inputs and therefore the accumulation of credit cannot be avoided. He appointed out that all the goods manufacture for the GALPHA were exported from their factory directly. In these circumstances, he argued that it was not possible for there to utilize the said credit as GALPHA had put condition in the contract and therefore, assertion of in the impugned order it was possible for the appellant to use the said credit is misplaced.

3. Learned AR relied on the impugned order. He argued that merely because a condition is put by the principal manufacturer is not sufficient to hold that it was not possible for the appellant to use the credit.

4. I have considered the rival submissions. I find that Rule 5 reads as under:-

> ***"Rule 5.*** *Refund of CENVAT credit. -Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be wilted by the manufacturer or provider of output service towards payment of*
>
> *(i) duty of excise on any final product cleared for home consumption or for export on payment of duty, or*
>
> *(ii) service tax on output service,*
>
> *and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:*
>
> *Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such*
>
> *Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilized for payment of service tax on easy output service*
>
> *Explanation. For the purposes of this rule, the words 'output service which is exported means the output service exported in accordance with the Export of Services Rules, 2005."*

4.1 Rule 5 clearly prescribes that if for **'Any reason'** the use of the said credit is not possible, the manufacturer or provider of the output service shall be allowed refund of such amount. The sole reason for denying the refund claim is the assertion that it was possible for the appellant to use the said credit. However in terms of the contract in the principal manufacturer it was not possible for appellant to use the said credit without the permission or clearance from the principal manufacturer. In these circumstances, the said restriction would come in the category of the term '**any reason'** appearing in Rule 5.

5. In the above factual matrix, I find merit in the argument of the appellant that it was not possible to utilize the said credit and therefore, they qualify for refund under Rule 5.

6. Moreover, it is also seen that the entire credit relates to various inputs use in the manufacture of finished goods. Even otherwise the refund of Cenvat credit of input used in the finished goods which are exported is admissible under Central Excise Rules, 2002. So even in that context the appellant could have availed the rebate of the said Cenvat credit.

7. In this background, I do not find that the impugned order is sustainable. The appeal is consequently allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi