CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86829 OF 2013

[Arising out of Order-in-Appeal No: US/93/RGD/2013 dated 28th March 2013 passed by the Commissioner of Central Excise (Appeals– II), Mumbai.]

Pidilite Industries Ltd
Mahad A 22 Unit, MIDC, Mahad
Dist: Raigad – 402 309 … ***Appellant***

versus

Commissioner of Central Excise
Raigad
Utpad Shulk Bhavan, Sector 17, Khandeshwar
Navi Mumbai - 410206 ***…Respondent***

APPEARANCE:

Ms Deepa R Shetty, Authorised Representative for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86776/2023

DATE OF HEARING: 15/06/2023
DATE OF DECISION: 11/10/2023

PER: C J MATHEW

In this appeal of M/s Pidilite Industries Ltd, relating to rejection of claim for refund of ₹ 44,03,076/- being the accumulated credit in

CENVAT credit account pertaining to exports effected from April 2011 to June 2012, disputes the two grounds relied upon by the lower authorities, *viz.*, the filing of claim beyond the period of limitation of one year from the date of exports and that no justification of inability to utilize the said credit was brought on record.

2. The appellant, a manufacturer of excisable goods, had undertaken exports too and, having availed CENVAT credit on 'inputs' and 'input services' procured for manufacture thereof, sought refund thereof under rule 5 of CENVAT Credit Rules, 2004, which the original authority had rejected on the grounds *supra* and their appeal thereafter was disposed off by Commissioner of Central Excise (Appeals-II), Mumbai in order[1] upholding the rejection.

3. According to Learned Counsel for the appellant, the claim was in accord with the prescription in notification no. 5/2006-CE (NT) dated 14th March 2006, issued in pursuance of empowerment for notifying safeguards, conditions and limitations, and that it was not open to the sanctioning authority to impose restrictions not specified therein. According to Learned Counsel, the lower authorities had erroneously relied upon the decision of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Coimbatore v. GTN Engineering (I) Ltd [2012 (281) ELT 185 (Mad.)]*. He further placed

[1] [order-in-appeal no. US/93/RGD/2013 dated 28th March 2013]

reliance on the decision of the Tribunal in *Commissioner of Central Excise & Customs, Surat-I v. Swagat Synthetics [2008(232) ELT 413 (Guj.)]*.

4. According to Learned Authorised Representative, it is abundantly clear from the decision of the Tribunal in *Rangdhara Polymers v. Commissioner of Central Excise, Ahmedabad- II [2022 (379) ELT 382 (Tri.-Ahmd)]*, that 'relevant date' under section 11B of Central Excise Act, 1944 would have to be complied with in all cases of refund. He also placed reliance on the decision of the Hon'ble High Court of Madras in *re GTN Engineering (I) Ltd.*

5. Rule 5 of CENVAT Credit Rules, 2004 is a self-contained scheme framed for erasing the burden of tax/duties devolving on manufactured goods owing to discharge of liability by suppliers of inputs and input services is not borne by the overseas buyer. In terms of the said rule, it is the right of every exporter to monetize such accumulated CENVAT credit attributable to the exported goods and while no conditions other than shipment of goods is qualification for eligibility, the empowerment of the Central Government to prescribe safeguards, conditions and limitations detailed certain conditions and qualification in notification no. 5/2006-CE (NT) dated 14th March 2006. Doubtlessly, those prescriptions should be adhered to, but, considering the nature and purpose of the safeguards compliance is to be scrutinized in accordance the spirit of rule 5 of

CENVAT Credit Rules, 2004.

6. We find that the lower authorities have not disputed the factum, or quantity, of goods exported. Rule 5 of CENVAT Credit Rules, 2004 does not prescribe any time-limit therein nor is there any reference to any provision of Central Excise Act, 1944 imposing any such limitation. Nonetheless, the prescription in notification 5/2006-CE(NT) dated 14th March 2006 refers to section 11B of Central Excise Act, 1944 but, in the absence of such specification in the statute, it is necessary to read down adherence to section 11B of Central Excise Act, 1944 as within the framework of monetization therein. In the said scheme, Central Government has prescribed that claims are to be consolidated for each quarter which, by itself, erases applicability of date of export as the relevant date. The decisions of the Tribunal that have been relied upon by both sides pertain to the period prior to such limitation having been incorporated by notification. Any limitation prescribed by the said notification would have to be in harmony with the procedure therein and the consolidation of claims per quarter as well as insistence on repatriation of export proceeds would naturally push the relevant date to the occurrence of either and whichever is later. An erroneous conclusion has been drawn from the decision of the Hon'ble High Court of Madras in *re GTN Engineering (I) Ltd* which had merely examined correctness of the decision of the Tribunal in concluding that there was no limitation in applying for such refund and the Hon'ble High Court of Madras had, in

fact, held that

> *'15. A reading of the above rule, though there is no specific relevant date is prescribed in the notification, the relevant date must be the date on which the final products are cleared for export. If any other conclusion is arrived, it will result in disentitling any person to make a claim of refund of CENVAT credit. Admittedly, the respondent has made a claim only invoking Rule 5 of the CENVAT Credit Rules, 2004. In that view of the matter, there cannot be any difficulty for us to hold that the relevant date should be the date on which the export of the goods was made and for such goods, refund of CENVAT credit is claimed.'*

with the 'date of export' taken as benchmark only in the facts and circumstances and, that too, with the observation that, in the absence of such liberal reading of the limitation, no exporter would be entitled to the scheme itself. Furthermore, in the said decision the remand direction of the Tribunal, insofar as it related to the bar of limitation, was approved by the Hon'ble High Court.

7. It is settled law that relevant date for the purpose of section 11B of Central Excise Act, 1944 would be the date of export/date on which the application could have been preferred/ date on which the last of the repatriation for the export of that quarter was received. This aspect has not been examined by the lower authorities.

8. The claim has also been held liable to be rejected for not having justified the inability to utilize the CENVAT credit towards domestic

clearance. We do not find any such condition in the said notification or, for that matter, in rule 5 of CENVAT Credit Rules, 2004. The eligibility for availment of the scheme, though elaborating upon the non-utilization of accumulated CENVAT credit, has not designed a mechanism for such segregation save proportionality with exports which is not in dispute. It is in these circumstances though the application for refund is required to reverse the credit proposed to be monetized as a principal condition for application and is sanctioned in proportion to the total credit as set out in paragraph 5 of the impugned notification. In these circumstances, it is not open to the refund sanctioning authority to impose any condition which is not contemplated by the prescribed notification.

9. Such entitlement for claim of refund has not been examined and, having been disposed off at the threshold, lacks scrutiny on merits. It is necessary for the application for refund to be restored to the original authority for determination of the amount of refund eligible in accordance with the said notification. To enable that, we set aside the impugned order and remand the matter to the original authority for fresh decision.

(Order pronounced in the open court on 11/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*