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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10493 of 2014

(Arising out of OIA-DMN-EXCUS-000-APP-260-261-13-14 dated 30/12/2013 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Bright Engineering Works Erstwhile 100 Eou **.....Appellant**
Plot No.535to536,New Gidc,Gundlav
VALSAD, 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

With

Excise Appeal No.12764 of 2019

(Arising out of OIA-CCESA-AUDIT-SRT-VK-48-2018-19 dated 19/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Bright Engineering Works **.....Appellant**
Plot No 535 & 536
New Gidc, Valsad, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri S.Suriyanarayanan, Advocate for the Appellant
Shri Ghanasyam Soni, Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 12202-12203 /2022

DATE OF HEARING: 23.08.2022
DATE OF DECISION: 15.12.2022

RAMESH NAIR

These appeals are directed against the Orders-In-Appeal No. DMN-EXCUS-000-APP-260 & 261-13-14 dated 30.12.2013 and CCESA-Audit-SRT/VK-48/208-19 dated 19.12.2018 passed by Commissioner (Appeals) which are impugned in the present appeals. In both the appeals common

issues are involved, therefore, these appeals are taken up together for disposal.

02. The brief facts of the case as per the records are that Appellant is EOU unit and filed 18 refund claims totally amounting to Rs. 43,35,610/- under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006-CE (NT) for un-utilized Cenvat Credit of Input Services used in or in relation to the manufacture of export goods. On receiving final exit order dated 21.07.2011 from the Development Commissioner, Kandla SEZ, Appellant firm submitted online application for amendment of Central Excise registration as a DTA unit. After debonding, appellant did not carry forward the accumulated Cenvat Credit but showed the same as Cenvat Credit Refund Receivable in its financial accounts and balance sheet. Jurisdictional Assistant Commissioner vide Order-In-Original dated 25.07.2013 sanctioned refund of unutilized cenvat credit of Rs. 43,35,610/- to the Appellant. Being aggrieved, appeal was filed by the revenue against the said order alleging that Appellant have taken double benefit in as much as they have taken refund of Rs. 45,35,610/- and they did not debit/reverse the said amount from Cenvat account. Against the said Order –In-Original, appellant also filed appeal before the Commissioner (Appeals) seeking interest on sanctioned refund. Learned Commissioner (Appeals) vide impugned Oder-In-Appeal dated 30.12.2013 allowed the appeal of revenue and rejected the appeal of appellant. Hence the present Appeal bearing No. E/10493/2014-SM is before me.

2.1 In this background, Appellant was also issued protective show cause notice on the basis of impugned OIA dated 30.12.2013. The same was adjudicated vide Order-In-Original dated 28.10.2015. Being aggrieved with, Appellant filed appeal before the Commissioner (Appeals), who vide impugned vide OIA dated 19.12.2018 upheld the OIO. Hence, the present appeal E/12764/2019 is before me.

03. Shri S. Suriyanarayanan, learned counsel for the appellant submits that since the exports by the EOU unit and the accumulation of unutilized cenvat credit of Service tax paid on various services used in the export of manufactured goods is not in dispute, just because the cenvat credit balance was not transferred to the DTA unit’s books from the EOU unit cannot lead to the inference that the cenvat credit balance in the EOU books have lapsed

on 24.07.2011. It is settled law that unutilized credit cannot lapse as final products manufactured/ exported by utilizing the cenvat credit become vested rights of the assessee. Since the appellant firm has acquired the right and privilege of getting refund of cenvat credit of the service tax paid and remaining unutilized on account of exports before the debonding of the EOU unit, there cannot be any lapsing of the credit whatsoever as per law. He placed reliance on the following judgments:-

- G.EXPORT INDUSTRIES 2007(212)ELT 421(TRIBUNAL)
- JENNTEXENGG COMPANY – 2009(234) ELT 519(TRIBUNAL)
- EICHER MOTORS LTD. – 1999 SCC ONLINE SC 81
- SAMTEL INDIA LTD. -2003 SCC ONLINE SC 372
- SAL STEEL LTD. VS. UNION OF INDIA -2010(260)ELT 185 (GUJ)
- MADHUSUDHAN INDUSTRIES LTD. VS. UNION OF INDIA-2014(309)ELT 54 (GUJ)

3.1 He also submits that the provision of Notification No. 27/2012-CE (NT) regarding reversal of credit for availing refund under Rule 5 of CCR, 2004 cannot be given retrospective effect in respect of refund application filed under the provision of Notification No. 5/2006- CE (NT). Notification No. 27/2012-CE(NT) came into force on 18.06.2012 whereas the cenvat credit refund claims were filed by the Appellant during July 2006 to December 2009 in respect of unutilised credits on account of exports. By no stretch of imagination, appellant can be asked to fulfil the condition of Notification No. 27/2012-CE (NT) on the date of sanctioning of the refund claim just because delayed the refund by issuing show cause notice on illegal ground.

3.2 He further submits that in any case, appellant had not carried over the credit lying in the books of EOU unit to the Cenvat Credit register of the DTA unit on the date of debonding. Appellant showed the credit as 'Modvat credit refund receivable in its financial account and Balance Sheet from financial year 2011-12(during which the EOU was debonded) and until grant of the refund in 2013-14.

04. On the other hand, Shri Ghanasyam Soni, Learned Joint Commissioner (AR) defended the impugned orders.

05. After considering the submissions of both the parties and perusal of the material on record, I find that originally when the appellant filed the refund claim under Notification No. 5/2006, the same was allowed by refund sanctioning authority. The revenue has challenged the sanction of refund claim on the ground that as per Notification No. 27/2012-CE (NT) dated 18.06.2012, which is issued in suppression of Notification No. 5/2006-CE(NT) dated 14.03.2006, "the amount that is claimed as refund under Rule 5 of the Cenvat Credit Rules shall be debited by the claimant from his cenvat credit account at the time of making the claim". I note that in the impugned orders the Commissioner (Appeals) has wrongly considered the claim under Notification No. 27/2012 instead of Notification No. 5/2006. The reliance made upon the provisions of Notification No. 27/2012- CE (NT) dated 18.06.2012 is absurd and illegal since the refund claim was admittedly filed in the present matter under the provisions of Notification No. 5/2006-CE (NT) dated 14.03.2006. it is pertinent to note that under Notification No. 5/2006, the requirement for debiting the refund claim amount did not exist. Further, I find that it is not a case of department that the appellant has carried forward unutilized disputed refund ofcenvatcredit into the Books of accounts or ER-1 returns of DTA unit when they transferred the unit from EOU to DTA. The refund sanctioning authority in present matter also has held that the Appellant have fulfilled conditions laid down under Rule5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006-C.E. (N.T.) dated 14-3-2006.I also find from the refund order that all the claims were sent to Range offices for verification and the same have been duly verified by the Range officers. The charge of double benefit made by the revenue is absolutely incorrect on the face of the records in as much as the appellant even though did not carry forward and debit the refund amount in their cenvat account. However it is the case of the revenue that such cenvat credit was never utilised. In my view the non transfer of unutilisedcenvat credit is as good as reversal of cenvat. The charge of the double benefit will sustain only when the assessee in one hand claim the refund and in other hand utilise the same amount for payment of duty on their clearance of goods, which is nobody's case. Hence the allegation of double benefit of the same amount does not even exists. In this undisputed fact, I am of the view that the Learned Commissioner (Appeals) has erred in rejecting the appellant's claim for refund.

5.1 As far as appellant's claim for interest on delayed refund is concerned, the issue has been settled by various decisions. Hence by following the ratio of the decisions, mainly *Ranbaxy Laboratories Ltd.*,2011 (273) E.L.T. 3 (S.C.)wherein the Hon'ble Supreme Court has held that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiry of period of three months from the date of receipt of application under Section 11B(1) ibid. I hold that the appellant is entitled for the interest as per the Apex Court decision in *Ranbaxy Laboratories Ltd.* (supra).

06. In the result, the impugned orders are set aside. The appeals are allowed in above terms.

(Pronounced in the open court on 15.12.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul