

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

E-Hearing
REGIONAL BENCH - COURT NO.I

Excise Appeal No.70227 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1554-19-20 dated 13.03.2020 passed by Commissioner (Appeals) CGST, Noida)

M/s Kancor Ingredients Ltd.,

.....Appellant

(B-4-B-5, Industrial Estate,
C.B. Ganj, Bareilly)

VERSUS

Commissioner, CGST, Noida

....Respondent

(Gautam Budha Nagar)

APPEARANCE:

Shri Ashish Vaish, Chartered Accountant for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70254/2024

DATE OF HEARING : 21 March, 2024

DATE OF DECISION : 20 May, 2024

P. K. CHOUDHARY:

This appeal has been filed by M/s Kancor Ingredients Limited against Order-in-Appeal No.NOI-EXCUS-002-APPL-1554-2019-20 dated 13-03-2020 passed by the Commissioner (Appeals) CGST, Noida. The learned Commissioner (Appeals) has upheld the rejection of refund claim for Rs.4,00,278/-.

2. Briefly stated, the facts of the case are that the Appellant is engaged in manufacture of Menthol Crystals, Dementholised Peppermint Oil, Peppermint Oil etc. falling under chapter 29, 30 and 33 of Central Excise Tariff. Most of their sales are for export to countries like France, USA, UK etc. In terms of Central Excise Notification No.12/2012 dated 17-03-12, all the final products of the Appellant became exempted from payment of duty. Appellant filed refund claim for Rs.4,00,278/- claiming refund of accumulated Cenvat Credit for the period from April, 2017 to

June, 2017 under Rule 5 of Cenvat Credit Rules, 2004¹ read with Notification No.27/2012-CE dated 18-06-12. The said refund claim pertained to that portion of Cenvat Credit which was attributable to export of goods. The Jurisdictional Deputy Commissioner rejected the said claim after observing that in terms of Rule (6)(1) of CCR, 2004, Appellant was not eligible to avail Cenvat Credit. He also observed that refund under Rule 5 of CCR, 2004 is admissible to those manufactures, who are engaged in manufacture of dutiable goods. On appeal, the learned Commissioner (Appeals) upheld the order of the Lower Authority after observing that Cenvat Credit is not available on input and input services used exclusively in the exempted goods. However, in terms of Rule 6 (6)(v) of CCR, 2004, Cenvat Credit is allowable in case of export under bond. In view of Notification No.42/2001-CE, Appellant was not eligible to export goods under bond and therefore refund claim is liable to be rejected.

3. The learned Chartered Accountant submitted that there is no dispute on the fact of export of goods; that these are eligible for refund under Rule 5 of CCR, 2004; that non clearance of exempted goods under bond is only a procedural issue; that substantive benefit of refund should not be denied for procedural / technical reasons; it is policy of the Government that export should be zero rated, only goods should be exported and not the taxes; there is no condition in Notification No.27/2012 dated 18-06-2012 that goods should be exported under bond; that for the earlier period, they have been allowed refund by the order of Commissioner (Appeals). He also placed reliance on following decisions:-

- (a) Jolly Board Ltd. vs. CCE reported in 2015 (321) E.L.T. 502.
- (b) Jobelle vs. CCE reported in 2006 (203) E.L.T. 627.
- (c) Union of India vs. Sharp Menthol India Ltd. reported in 2011 (270) E.L.T. 212 (Bom.).
- (d) Commissioner of Central Excise vs. Drish Shoes Ltd. reported in 2010 (254) E.L.T. 417 (H.P.).

¹ CCR, 2004

4. The learned Departmental Representative justified and reiterated the impugned order.
5. Heard both sides and perused the appeal records.
6. The main issue in this appeal is as to whether refund of accumulated Cenvat Credit is allowable on export of goods which are exempted from payment of duty, particularly when the same has not been exported under bond.
7. I take note of the fact that the Appellant has been allowed refund for the prior period. I find that this issue is no more *res integra*. It is by now the settled law that refund of accumulated Cenvat Credit is allowable on export of goods even if they are exempted from payment of Central Excise Duty. It has also been the settled law that export under bond is only a procedure. The claim for refund should not be disallowed when the fact of export is not in dispute. In the case of Jolly Board Limited vs. Commissioner of Central Excise, Aurangabad reported in 2015 (321) E.L.T. 502, the refund claim of the party was denied by Lower Authorities on the ground that the assessee is the manufacturer of exempted goods, therefore as per Rule 6 (1) of CCR, 2004, they are not entitled to take input credit. Consequently, they are not entitled to file refund claim. Another reason for denial of refund was that goods are not exported under bond. On appeal, Tribunal held as under :-

"5. In this case the appellant has procured inputs/input service on payment of duty which were gone in the manufacturing of exempted goods which were exported by the appellant. These facts are not in dispute. The intent of the legislation is not in dispute that the taxes are not to be exported. The same issue came up before Jobelle (supra) wherein this tribunal held that the sub-rule (5) makes an exception when exempted finished goods are either cleared to a free trade zone, SEZ, 100% EOU or are cleared for export under Bond without payment of duty. If the goods are exported on payment of duty after taking credit of duty paid on the inputs and utilizing the same,

then the question of refund of input duty would not arise. But is clearly the Governments policy not to export the domestic duties, on the finished goods or on the inputs, to the International market. If refund of input duty credit is not allowed, the goods will become costly in International market and less competitive.

7. *The issue came up before the Hon'ble High Court of Bombay in Repro India Ltd. (supra) wherein the Hon'ble High Court held that CENVAT credit used in the manufacture of final product being exported irrespective of the fact that final product are otherwise exempted by provisions of Rule 6(6)(v) of the CENVAT Credit Rules, 2004 are applicable. Further, I find that in the case of Salzer Controls Ltd. - [2003 \(160\) E.L.T. 1169](#) and Paras Ship Breakers Ltd. this Tribunal has held that non-execution of bonds are only technical lapse. Further, in the case of Well Known Polyester Ltd. (supra) wherein the exempted goods were exported without bond or LUT by an assessee who was not even registered without bond or LUT by an assessee who was not even registered with the Central Excise department. This Tribunal has held that execution of bond/LUT was only procedural lapse for which refund could not be denied."*

8. The aforesaid order of the Tribunal was challenged before the Hon'ble High Court at Bombay. Vide order dated 02-09-2016 reported as 2017 (50) S.T.R. 131 (Bom), the Hon'ble High Court was pleased to dismiss the departmental appeal after observing thus :-

"7. *These appeals can only be entertained on substantial questions of law. As far as contention of the learned counsel for the appellant about observance of Rule 18 of the Central Excise Rules, 2002 is concerned, the same was not a subject matter of contention before the authorities or the Tribunal nor is raised in the present appeal. Even otherwise, the subject matter involved in the present*

appeals was also the subject matter before the Himachal Pradesh High Court in case of Commissioner of Central Excise v. Drish Shoes Ltd. (supra), where it has been held by the Himachal Pradesh High Court that as under :-

"(16) The scheme of CENVAT Credit Rules, 2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows that CENVAT credit/refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading of Rule 3 and subrule (1) of Rule 6 of the CENVAT Credit Rules, 2002, as also the Rules of 2004, so as to avoid indirect double taxation on inputs. However, this rule is not absolute. It is subject to Exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.

17. Subrule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in case of dutiable goods. It appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for CENVAT could not be claimed in respect of input of those goods, at least under the aforesaid exception clause. To overcome this kind of anomalous situations, exception clause contained in subrule (6) if

Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.

18. Learned Counsel for the appellant argued that term 'excisable goods' used in subrule (6) of Rule 6 of 2004 Rules, meant only dutiable goods. Submission has been noticed only to be rejected.

*19. A Division Bench at Bombay High Court in [2009 \(235\) E.L.T. 614](#) (Bom.), *Repro India Ltd. v. Union of India*, while dealing with a similar situation and interpreting the provisions of Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, has held that expression "excisable goods" is wider than the expression "exempted goods", as it includes both dutiable and also exempted goods.*

20. In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No. 1 is answered accordingly.

21. As regards question no. 2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final products which are exempt from duty, can claim refund of CENVAT. So, this question is also answered against the appellant."

8. *It would be clear that in the decision of the Himachal Pradesh High Court, the judgment of this Court in case of [Repro India Ltd. v. Union of India](#) reported in [2009 \(235\) E.L.T. 614](#) (Bom.) is also relied, wherein it is held that expression "excisable goods" is wider than the expression "exempted goods" as it includes both dutiable and also exempted goods.*

9. *It is also submitted by the learned counsel Mr. Ladda that the judgment of the Himachal Pradesh High Court in case of [Commissioner of Central Excise v. Drish Shoes Ltd.](#) (supra) is confirmed by the Apex Court in Appeal No. 2887/2012. The learned counsel submits that the judgment in the case of [Commissioner of Central Excise v. Drish Shoes Ltd.](#) (supra) may not assist the assessee as the said judgment does not consider execution of bond for export of exempted goods.*

10. *Considering the fact that judgment in the case of [Commissioner of Central Excise v. Drish Shoes Ltd.](#) (supra) is confirmed by the Apex Court involving similar issue, no substantial question of law arises in the present appeals. As such the appeals are dismissed. No costs."*

9. In the case of [Commissioner of Central Excise vs. Drish shoes Limited](#) reported as 2010 (254) E.L.T. 417 (H.P), the Hon'ble High Court of Himachal Pradesh was also examining the similar issue. It held that input credit is allowable when exempted goods are exported under bond. Refund under Rule 5 of CCR, 2004 is allowable to the manufacturer, who exports the final products which are exempt from duty. The said decision of the Hon'ble High Court stands confirmed by the Hon'ble Supreme Court as reported in 2018 (360) E.L.T. (A191).

10. By Respectfully following the aforesaid decisions, I hold that the Appellant is eligible for Cenvat Credit of input and input services which are used in export of goods and are exempted from payment of Central Excise Duty. In terms of Rule 5 of CCR,

2004, they are eligible for refund of accumulated Cenvat Credit attributable to export of goods. Non submission of bond is only a procedural lapse.

11. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on – **20th May, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS