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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX Appeal No. 11936 of 2015- DB

(Arising out of OIO-AHM-EXCUS-003-COM-004-15-16 dated 31/07/2015 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)

Gujarat Ambuja Exports Ltd **.....Appellant**
Kadi Thor Road, Tal- Kadi,
Gandhinagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Ahmedabad-iii **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat- 380009

APPEARANCE:
Shri Amber Kumrawat & Ms. Raksha Bhandari, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11572/2024

DATE OF HEARING: 19.03.2024
DATE OF DECISION: 16.07.2024

RAMESH NAIR

This appeal is directed against Order-in-Original No. AHM-EXCUS-003-COM-004-15-16 dated 31.07.2015.

1.1 The relevant facts that arise for consideration are that appellant had filed refund claims applications under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006-CE (NT) dated 14.03.2006 in respect of unutilized balance of Cenvat Credit and refund in respect of Service tax on services utilized for export of goods as per the provisions of Notification No. 41/2007 dated 06.10.2007. The said refund claim were rejected by the adjudicating authority under OIO No. 7/S.Tax/Ref/Kadi/07-08 dated 31.03.2008. However, on appeal filed by the appellant against the said OIO, Ld. Commissioner (Appeals) vide OIA dated. 05.09.2008 allowed the appeal with consequential relief and remanded the case back to original adjudicating authority. However department preferred an appeal against the said OIA dated 05.09.2009 before the Tribunal. In course of fresh

adjudicating of the refund claims filed by the Appellant, Assistant Commissioner of Central Excise, Kalol vide various orders partly sanctioned the refund claims. Being aggrieved by the orders passed by the Assistant Commissioner of Central Excise, Kalol, the Appellant once again filed an appeal before the Commissioner (Appeals). The Ld. Commissioner (Appeals) while remanding the matter decided the appeal partly in favour of the Appellant vide his OIA dated 17.09.2009. The said order was challenged by the department before the CESTAT.

1.2. In view of the order dated 17.09.2009 passed by the Ld. Commissioner (Appeals) the Appellant vide letter dated 05.01.2010 requested for sanction of refund. The Assistant Commissioner, sanctioned the refund claim of Rs. 1,17,40,709/- under OIO dated 17.03.2010. The said OIO was challenged by the department before CESTAT. Meanwhile a protective show cause notice dated 29.07.2010 was issued to the Appellant for recovery of refund claim sanctioned vide OIO dated 17.03.2010.

1.3 The matter was decided by CESTAT under Order dated 16.12.2010 wherein the appeal against both the OIA dated 05.09.2008 and 17.09.2009 filed. The said order of CESTAT has been accepted by the department on 27.05.2011. However the CESTAT has ruled in favour of assessee in respect of all the issue but for the issue pertaining to effective date of Notification No. 5/2006-CE (NT) wherein the matter was remanded back to the Original Adjudication Authority. In view of the above directions, the matter was taken up for de –novo adjudication by the Assistant Commissioner. The said issue has been decided by the Assistant Commissioner under OIO dated 25.03.2015 wherein it has been found that an amount of Rs. 55,88,459/- pertains to the period prior to 14.03.2006 i.e. introduction of Notification No. 5/2006-CE (NT) and as such the refund of the same would not be admissible. Accordingly, the refund claim of Rs. 55,88,459/- has been rejected under the aforesaid OIO. Being aggrieved by the order-in-original dated 25.03.2015 the appellant filed an appeal before the Ld. Commissioner (Appeals) which is currently pending.

1.4 The Ld. Commissioner vide impugned Order No. EXCUS-003-COM-004-15-16 dated 31.07.2015. adjudicated the show cause notice dated 29.07.2010 which was issued to the Appellant for recovery of sanctioned

refund of Rs. 1,17,40,709/- vide OIO dated 17.03.2010. The Ld. Commissioner vide impugned order held that in view of the OIO dated 25.03.2015 the refund claim of Rs. 55,88,429 was rejected, the said amount needs to be recovered from the Appellant. The balance demand of Rs. 61,52,250/- raised in the show cause notice was set aside on the ground that the same has been settled in favour of the Appellant. Being aggrieved, the present appeal is filed by the Appellant before this Tribunal.

2. Shri Amber Kumarawat, Learned Counsel with Ms. Raksha Bhandari, Advocate appearing on behalf the Appellant submits that the Ld. Commissioner in the impugned order has followed the decision in OIO dated 25.03.2015 wherein it was held that refund of Rs. 55,88,459/- under the provisions of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 05/2006-CE(NT) dated 14.03.2006 is erroneously sanctioned and the same is liable to be rejected in as much as the same pertains to the period prior to the introduction of the Notification No. 05/2006-CE(NT) dated 14.03.2006. The issue involved in the present case is squarely covered by the decisions of M/s WNS Global Pvt. Ltd reported at 2008(10)STR 273(Tri. Mumbai) affirmed by the Hon'ble Bombay High Court.

2.1 He also submits that the fact that goods are exported is not in dispute; thus the appellant have acquired a right to obtain the refund. The refund cannot be denied once the core fact of export is not in dispute. He placed reliance on the following judgments:-

- Universal Enterprises Vs. GOI -1991(55)ELT 137 (GOI)
- Poulose Mathew Vs. CCE 1989(43)ELT 424 (Tri.)
- (iii)Madras Process Printers 2006(204) ELT 632(GOI)
- Barot Exports -2006(203)ELT 321 (GOI)
- CCE Vs. Binny Ltd. – 1987(31)ELT 722(T)
- Krishna Filaments Ltd. -2001(131)ELT 726(GOI)
- Modern Process Printers 2006(204)ELT 632(GOI)
- CCE, Bhopal – 2006(205)ELT 1093 (GOI)
- Cotfab Exports-2006(205)ELT 1027(GOI)
- Atma Tube Products Ltd. Vs. CCE 1998(103)ELT 270(T)
- Synthetics and Chemicals Ltd. Vs. CCE 1997(93)ELT 92 (T)
- Apha Garments Vs. CCE 1996(86)ELT 600(T)

3. On other side Shri Rajesh R Kurup, Learned Superintendent (AR) appearing on behalf of the revenue reiterated the finding of the impugned order.

4. Heard both sides and perused records.

4.1 We find that the Notification No. 11/2002-CE issued under Rule 5 of the Cenvat Credit Rules, 2004 allowed refund of CENVAT Credit of specified duty only in respect of inputs used in or in relation to the manufacture of final products which are cleared form export under bond. After 14.03.2006, as per Notification No. 05/2006-CE (NT), such refund of CENVAT credit was allowed both in respect of the input or input services used in the manufacture of the final products which is cleared for export under bond or letter of undertaking; as well as input or input services used in providing output service which has been exported without payment of Service tax. In the present disputed matter as per the revenue benefit of input services used in manufacture of final products exported was started to be admissible from the said date i.e 14.03.2006, the date of issuance of Notification No. 05/2006-CE (NT) and as per the revenue the provisions of Notification No. 5/2006-CE (NT) will not apply to cases prior to 14.03.2006. We find that therefore the Ld. Commissioner vide impugned order held that refund amount of Rs. 55,88,459/- is required to be recovered from the Appellant.

4.2 In this context we find that the disputed issue is no more *res integra* as the Division Bench of the Tribunal in the case of *WNS Global Services (P) Ltd.* v. *CCE, Mumbai* as reported at 2008 (10) S.T.R. 273 (T) = 2008-TIOL-228-CESTAT-Mum. held that substituted Rule 5 will be applicable for the export of services prior to 14-3-2006. In that decision the Tribunal has held as follows :-

> *"10..... We, therefore hold that in present circumstances, where the refund claims were filed after the amendment, and satisfies every requirement of Rule 5 and the Notification issued thereunder, the refund cannot be rejected as there was no condition in the notification or rules that such notification would apply only in respect of the exports made after 14-3-2006. Once the refunds are under the amended rules and the Notification*

issued thereunder, as already held, the same cannot be denied merely because they relate to the exports mode prior to the date of amendment."

4.3 This very issue has been dealt with and the Tribunal has held that Rule 5 by which the refund is given in respect of the credit taken will be applicable even to the refunds relating to the period prior to 14-3-2006. In other words, when the refund claim is made and if the Rule as amended in operation, then the refund cannot be denied on the ground that the refund pertains to an earlier period. In the present case, revenue found that an amount of Rs. 55,88,459/- pertained to the period prior to 14.03.2006 i.e. the introduction of Notification No. 5/2006-CE and as such refund of the same would not be admissible. The only reason given in the adjudication for rejection of the claim is that it pertains to the year prior to 14-3-2006. In view of the decision of the Mumbai Bench *supra* this objection cannot be sustained.

5. In these circumstances, the impugned order has no merits, the same is set aside. We allow the appeal with consequential relief.

(Pronounced in the open court on 16.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha