CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

EXCISE APPEAL NO. 51000 OF 2020

[Arising out of the Order-in-Appeal No. 123/Central Tax/Appl-II/Delhi/2019 dated 16/12/2019 passed by Commissioner of Central Tax, Appeals – II, New Delhi – 110 066.]

M/s Welspring Universal **...Appellant**
B-19, Mayapuri Industrial Area, Phase – I,
New Delhi – 110 064.

Versus

Commissioner of Central Tax **...Respondent**
Appeals – II, Delhi,
UG Floor, EIL Annexe Building,
Bhikaji Cama Place,
New Delhi – 110 066.

APPEARANCE:
Shri Gaurav Gupta, Shri Deepanshu Sahni and Shri Rahul Aggarwal, Advocates for the appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 56215/2024

DATE OF HEARING : 28.05.2024
DATE OF DECISION: 01.08.2024

P.V. SUBBA RAO

M/s. Welspring Universal, New Delhi[1] filed this appeal to assail the order-in-appeal dated 16.12.2019[2] passed by the Commissioner (Appeals), New Delhi whereby he allowed the

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1. **Appellant**
2. **Impugned order**

appeal of the Revenue and set aside the order-in-original[3] dated 06.05.2019 passed by the Assistant Commissioner sanctioning refund of Rs. 76,72,000/- to the appellant herein.

2. We have heard Shri Gaurav Gupta, learned counsel for the appellant assisted by Shri Deepanshu Sahni and Shri Rahul Aggarwal and Shri Rakesh Agarwal, learned authorized representative for the Revenue and perused the records.

3. The appellant was registered with the Central Excise Department and was a 100% Export Oriented Unit[4] engaged in manufacture of welding machine tools/accessories. As an EOU, it was also registered as a private bonded warehouse under section 58 and 65 of the Customs Act, 1962. The appellant exported goods under claim of rebate after clearing them under four ARE-1 dated 01.07.2008, 29.06.2007, 02.07.2007 and 30.06.2007. The rebate claim was allowed by the Jurisdictional Officers and thereafter it was felt that the rebate was erroneously sanctioned. At the insistence of the department, the appellant deposited the entire amount of rebate sanctioned to it along with interest. The appellant, by letter dated 31.03.2008, informed the department that it intended to take credit of duty of Rs. 76,72,000/- against the goods exported through 36 invoices. This amount also included the amount of Rs. 7,88,553/- which had earlier been sanctioned as rebate to the appellant and which was repaid by the appellant.

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3 OIO
4. EOU

4. The Assistant Commissioner, by letter dated 17.04.2008, intimated the appellant that it cannot be allowed to take the aforesaid credit of Rs. 76,72,000/-. However, the appellant took the credit, which was reflected in its returns. A show cause notice[5] dated 03.02.2009 was issued to the appellant proposing to deny rebate of Rs. 7,88,553/- and appropriate the amount which was already paid by the appellant towards the recovery of this rebate. It was also proposed to disallow Cenvat credit of Rs. 76,72,000/- and recover it Rule 14 of Cenvat Credit Rules, 2004[6] read with section 11A of the Central Excise Act, 1944[7] along with interest under section 11AB. It was also proposed to impose penalties under Rule 15/15A of CCR. These proposals confirmed by the Commissioner by order dated 26.02.2010.

5. Aggrieved, the appellant filed an appeal before this Tribunal, which was allowed by way of remand by order dated 07.02.2017 with the following observations :-

> "Having considered the full facts and background, as narrated above, we find that the present order cannot be legally sustained. Accordingly we set aside the same. The matter has to go back to the original authority to examine all the above mentioned issues and take a holistic view about correctness of credit initially taken by the appellant in terms of applicable provisions of law, more specifically Rule 5 of Cenvat Credit Rules, 2004. As the present situation emerged because of handling of the case by the Jurisdictional Authorities not in tune with the legal provisions, the statutory benefit available to the appellants cannot be denied on various technicalities.

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5. SCN
6. CCR
7. Act

> The original authority should examine all these issues and decide the case afresh. The appellant shall be given adequate opportunity to represent their case before a decision is taken. The appeal is allowed by way of remand".

6. This order of the Tribunal was challenged by the Revenue before High Court and by order dated 13.12.2017, the High Court upheld it. After considering the submissions made by the appellant, the Commissioner dropped the proceedings initiated by the SCN by order dated 21.03.2017. This order of the Commissioner order has been accepted by the department. Thus, the final decision was that the appellant was entitled to Cenvat credit of Rs. 76,72,000/-.

7. Meanwhile, the Central Excise Act has been superseded by Central Goods and Service Tax Act, 2017[8] in respect of most goods including those manufactured by the appellant. Therefore, the appellant's Cenvat credit of Rs. 76,72,000/- could not be used. It, therefore, claimed refund of this amount in terms of section 11B of the CEA read with Rule 18 of Central Excise Rules, 2002[9] and section 142 (3) of CGST Act. This refund was sanctioned by the Assistant Commissioner by his order dated 06.05.2019. Revenue appealed against this sanction of refund, which was set aside by the Commissioner (Appeals) by the impugned order. Aggrieved, the appellant is before us.

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8. CGST Act
9. CER

8. **Submissions on behalf of the appellant** : The Commissioner (Appeals) passed the order failing to appreciate that rebate claims in respect of goods exported on payment of duty are maintainable under Rule 18 of the CER. The appellant had exported goods by filing rebate applications in prescribed format ARE-I. The goods were exported under claim of rebate on the advice of the Jurisdictional Officers and the Bond Officer under whose supervision the goods were removed from the factory. The appellant was working under physical control of the Jurisdictional Authorities being a 100% EOU and all ARE-1s indicate that the duty has been discharged under Rule 18. The goods are exported on payment of duty rebate is admissible and there is no restriction on claim of rebate by a 100% EOU.

(2) Since the appellant had paid duty, it was entitled to take Cenvat credit of the duty paid on inputs. All credit was taken on the basis of documents prescribed under Rule 9 of the CCR.

(3) The appellant had not transitioned the balance of Cenvat credit by filing of Form TRAN-I as Input Tax Credit[10] under the CGST Act. Instead, it filed this refund claim, which it was entitled to, as per the CEA read with section 142 (4) of the CGST Act.

(4) Therefore, the Assistant Commissioner was correct in sanctioning the refund and the Commissioner (Appeals) erred in reversing this decision by the impugned order. The appeal may be allowed and the impugned order may be set aside.

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10. ITC

9. **Submissions on behalf of the Revenue** :- Rebate of duty paid on export goods or duty paid on material used in the manufacture of exported goods is permissible under Rule 18 of CER, 2002. This rule does not allow refund of Cenvat credit which is governed by Rule 5 of the CCR. The appellant was not seeking refund of Cenvat credit under Rule 5 of CCR.

(2) The refund claim filed by the appellant was not a claim of refund of duty paid on the material used in the manufacture of export goods.

(3) The duty liable to be paid on the exported goods was paid on 13.11.2018 from Cenvat account which did not exist after the introduction of GST w.e.f. 01.07.2017. Any payment of duty from non-existing account is not legally and valid.

(4) Since the duty exported goods was not paid under the law existing prior to 01.07.2017 no refund can be sanctioned under Rule 18 of CER, 2002.

(5) The appellant did not transition the amount of Cenvat credit in account as on 30.06.2017 into the ITC under GST under TRAN-I in terms of section 140 of CGST Act. The appellant had not filed claim of refund of Cenvat credit, but filed claim of refund of central excise duty paid on the goods exported under Rule 18 of CER. The appellant neither paid duty on the exported goods under the law existing prior to 01.07.2017 nor paid duty in terms

of transitional provisions of CGST Act and Rules after 01.07.2017. Therefore, there cannot be any claim of refund of such duty which was not paid.

10. We have considered the submissions made on both sides and perused the records.

11. The universally accepted principle of international trade is that goods are exported, but not the taxes levied on them. This principle has been incorporated in the provisions of central excise in the following forms :-

(a) Rebate of duty under Rule 18 of CER: If goods are exported the duty paid on them on manufacture and the duty paid on materials used in the manufacture is given to the exporter as rebate under this rule ;

(b) Export under bond : As per Rule 19 of the CER, goods manufactured may be exported without paying any duty by executing a bond undertaking to export the goods after the removal from the factory. Once the goods are exported the bond gets discharged. This provision negates any amount of duty liability on the final products. Insofar as the duty paid on the inputs is concerned, the manufacturer can take it as Cenvat credit and utilize it ;

(c) Refund of Cenvat credit under Rule 5 of the CCR : Where Cenvat credit is taken on inputs used in manufacture of final products which are finally

exported, such credit can be utilized by the exporter to pay duty on other clearances of goods or it can claim refund as per Rule 5 of CCR.

12. In this case, the appellant had initially exported goods under claim for rebate. The appellant paid duty and then claimed rebate of the same under Rule 18. The rebate was initially sanctioned, but later, on the advice of the department, the appellant re-paid the entire amount of rebate given to it along with interest. Thereafter, the appellant continued to pay duty on exported goods debiting the amount on its Cenvat account. The appellant took Cenvat credit of the duty which it had paid on the final products amounting to Rs. 76,72,000/-. The department sought to deny the Cenvat credit and this Tribunal in the first round of litigation remanded the matter to the Commissioner to take the holistic view of the matter and decide.

13. The final order of this Tribunal remanding the matter to the Commissioner was assailed by the department before the High Court of Delhi. By order dated 13 December 2017, the High Court upheld the order of this Tribunal. In pursuance of the Tribunal's order, the Commissioner by order dated 21.03.2017 dropped the proceedings against the appellant and thereby allowed the Cenvat credit taken by the appellant.

14. Thereafter, the appellant filed refund claims under Rule 18 read with section 11B, which were sanctioned by the Assistant Commissioner by his order dated 06.05.2019.

15. This order of the Assistant Commissioner was assailed by Revenue before the Commissioner (Appeals) on the following grounds :-

(a) The entire refund claim was barred by limitation because it was filed only on 08.05.2018 ;

(b) The Cenvat credit to the appellant was never stayed and, therefore, it was always available to the appellant. It is only the department which has unsuccessfully pursued the matter before the High Court ;

(c) The appellant was entitled to carry forward the Cenvat credit in TRAN-I as input tax credit under the GST ;

(d) The adjudicating authority misunderstood the decision of the Tribunal, the High Court and the Commissioner in the remand proceedings to mean that the appellant was entitled to refund of the Cenvat credit when in fact the only allowed Cenvat credit of the disputed amount of Rs. 76,72,000/-.

16. The appellant had submitted before the Commissioner (Appeals) that the issue had attained finality only on 13.12.2017 when the order of the High Court was passed and, until then, it could not take the credit or transfer it under TRAN-I as ITC. The Commissioner (Appeals) agreed with the submission of the department and set aside the sanction of refund.

17. Learned departmental representative argued before us that the appellant had filed a refund claim under Rule 18 of the CER which is a refund of duty paid on exported goods. It is not a claim of refund of the duty paid on the materials used in the manufactured of exported goods. It was also not a claim seeking refund of Cenvat credit under Rule 5 of the Cenvat Credit Rules. Therefore, according to the learned authorized representative, the Assistant Commissioner erred in sanctioning refund under Rule 18, which was not admissible and the Commissioner (Appeals) was correct in setting aside the sanction order. The appellant, according to the learned departmental representative, could have transitioned the Cenvat credit available as on 30.06.2017 as ITC under GST under TRAN-I in terms of section 140 of the CGST Act, but it did not. Learned counsel for the appellant submitted that as per section 142 (4) of the CGST Act, 2017, any refund available under the erstwhile law (i.e. Central Excise Act) will continue to be governed by the provision of the erstwhile law. Since the unutilized Cenvat credit could be refunded under Rule 5 of the CCR, 2004 refund of the same is available under the same even after the introduction of the CGST.

18. We do find that the Assistant Commissioner sanctioned refund under Rule 18 of the CER read with section 11B. Revenue’s objections to this sanction of refund was on two counts: firstly, the claim was time barred ; secondly, refund could not have been sanctioned under Rule 18 of CER and there

was no claim of refund under Rule 5 of CCR. Revenue does not dispute that the appellant was entitled to Cenvat credit after the decision of the Commissioner in the remand proceedings and after the judgment of the High Court upholding the remand order of this Tribunal. It is the case of Revenue that such Cenvat credit would have only been transitioned under TRAN-I as ITC under GST. No refund could have been sanctioned under Rule 18 and no refund could have been sanctioned according to the Revenue even under Rule 5 of Cenvat Credit Rules because there was no such claim.

19. According to the appellant, it was entitled to credit and it was entitled to refund also. The delay in filing refund claim occurred because the matter was agitated by the Revenue before High Court and it was awaiting the decision of High Court in the matter.

20. It is undisputed that Cenvat credit was available to the appellant after the order of the Commissioner was passed in the remand proceedings. It is true that the appellant could have transitioned the credit under TRAN-I as ITC under GST. The appellant could also have claimed refund of this amount under Rule 5 of CCR. However, since the department had agitated the matter before the High Court, the appellant waited for the order of the High Court and only thereafter filed the refund claim. The appellant should have filed refund claim under Rule 5 of the CCR, but wrongly filed it under Rule 18 of the CER. The undisputed

legal position is that Rule 5 of the CCR provides for refund of Cenvat credit in cash in respect of the goods exported. It is a settled legal position in this case that the appellant was entitled for Cenvat credit of Rs. 76,72,000/-. Instead of claiming refund under Rule 5 of CCR, the appellant claimed it citing Rule 18 of CER. The Assistant Commissioner also wrongly sanctioned it quoting Rule 18 of CER. However, there cannot be any dispute about the fact that the appellant was entitled to refund of the said amount under Rule 5 of CCR because it pertained to exports and the appellant was a 100% EOU.

21. Revenue's contention is that the Cenvat credit could have been transitioned as ITC under GST by filing Form TRAN-I. However, the appellant was not required to only transition the credit through TRAN-I. Section 142 (3) of the CGST Act provides for cash refund. It reads as follows :-

> "(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):
>
> **Provided** that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:
>
> **Provided** further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount

as on the appointed day has been carried forward under this Act".

22. Therefore, the appellant was entitled to refund of Cenvat credit of Rs. 76,72,000/- under Rule 5 of CCR. This substantive benefit of the appellant cannot be taken away because the appellant had quoted the wrong rule in filing its refund claim and the Assistant Commissioner also sanctioned the refund quoting the wrong rule.

23. Insofar as the Revenue's contention regarding the limitation is concerned, we find that it was the Revenue which agitated the matter and appealed to the High Court. It is true that without waiting for the judgment of the High Court, the appellant could have filed the refund claim but the appellant waited the judgment of the High Court dated 13.12.2017 and thereafter filed the refund claim on 08.01.2018. We, therefore, find that the claim was not hit by limitation.

24. In view of above, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Order pronounced in open court on 01/08/2024.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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