

2010-TIOL-418-CESTAT-MAD

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI**

Appeal No.E/455/08

Arising out of Order-in-Appeal No.83 & 84/2008-CE (SLM) Dated: 29.4.2008
Passed by the Commissioner of Central Excise (Appeals), Salem

Date of Decision : 13.11.2009

CAUVERY STONES IMPEX PRIVATE LTD

Vs

COMMISSIONER OF CENTRAL EXCISE, SALEM

Appellant Rep by: Shri R Srinivasan, Cons.
Respondent Rep by: Shri T H Rao, SDR

CORAM: Jyoti Balasundaram, VP

Central Excise – CENVAT Credit – outward transportation from factory gate to the port is eligible as input service – credit admissible.

Refund of credit under Rule 5 of the CENVAT Credit Rules, 2004 – clearance to the 100% EOUs is also to be considered as export for the purpose of refund under Rule 5.

Appeal allowed.

Case law referred:

1. *India Japan Lighting Pvt. Ltd. Vs CCE Chennai - [2007-TIOL-1755-CESTAT-MAD](#) Referred (Para 3)*

2. *Ambuja Cements Ltd. [2009 (236) ELT 431 (P&H)] - [2009-TIOL-110-HC-P&H-ST](#) Relied on (Para 4)*

3. *CCE Surat Vs Shilpa Copper Wire Industries - 2008 (226) ELT 228 Relied on (Para 5)*

4. *Sanghi Textiles Ltd.Vs CCE Hyderabad [2006-TIOL-1805-CESTAT-BANG](#) Relied on (Para 5)*

CBEC Circulars referred:

[Circular No.97/6/2007-ST dt. 23.8.2007](#) Referred (Para 3)

FINAL ORDER NO. 1756/09

Per: Jyoti Balasundaram:

The appellants herein, who are a 100% EOU, engaged in the manufacture and export of polished granite monuments, slabs and tiles and also cleared few of their finished products to other 100% EOUs, filed refund claim for unutilized CENVAT credit of input services in terms of Notification No.5/2006-CE dt. 14.3.06, under the provisions of Rule 5 of CENVAT Credit Rules, 2004. The period covered by the refund claims was 1.1.07 to 31.3.07 and 1.4.07 to 30.6.07. Refund claimed for the first period was Rs.3,75,978/- and the refund claimed during the second period was Rs.1,16,386/-. Claim for refund of Rs.1,04,678/- was rejected and the balance sanctioned. The adjudication order was upheld by the lower appellate authority; Hence this appeal.

2. I have heard both sides. The grounds for rejection are that service availed on GTA service pertaining to transportation of export goods from factory to port is not an eligible input service and that the refund is to be restricted to their actual export turnover as clearances made to other 100% EOUs are not to be taken into reckoning for export purposes.

3. As regards the first ground, I note that it has been held that factory gate is the place of removal for the appellants in the light of Tribunal's decision in *India Japan Lighting Pvt. Ltd. Vs CCE Chennai* [2007 (8) STR 124] = [2007-TIOL-1755-CESTAT-MAD](#). Therefore, I agree with the assessee that they are entitled to credit of service tax paid upto port in the light of CBEC's [Circular No.97/6/2007-ST dt. 23.8.2007](#), the relevant portion of which is reproduced hereunder :-

"..... However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of the goods and the property therein remain with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of service tax paid on the transportation upto such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at that said price."

4. The Hon'ble Punjab & Haryana High Court has held in the case of *Ambuja Cements Ltd.* [2009 (236) ELT 431 (P&H)] = [2009-TIOL-110-HC-P&H-ST](#) that the above circular is binding on the department. The assessee satisfied all the conditions set out in the circular since the price of the goods exported was on FOB basis and therefore the ownership of the goods exported remained with the assessee upto the port of shipment and they also bore the risk of the goods upto the port of shipment. Further, the freight from the factory gate to the port formed part of the FOB price. Therefore, the place of removal is the port and GTA service from factory gate to port of shipment is an input service and hence credit of service tax paid thereon is admissible. I, therefore, hold that the assessee is entitled to refund of Rs.69,172/- on outward transportation upto the port.

5. The rejection of the remaining part of the claim is also not in order as clearance made to 100% EOU is also to be considered as export in the light of Tribunal's decision in *CCE Surat Vs Shilpa Copper Wire Industries* [2008 (226) ELT 228] and also *Sanghi Textiles Ltd. Vs CCE Hyderabad* [2006 (206) ELT 854] = [2006-TIOL-1805-CESTAT-BANG](#). Refund of unutilized credit is, therefore, to be allowed in the light of the above decisions. In the light of the above discussion, I set aside the denial of refund claim of Rs.1,04,678/- and allow the appeal.

(Dictated and pronounced in open court)