IN THE CUSTOMS, EXCISE & SERVICE TAX

APPELLATE TRIBUNAL

SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/40608/2015

(Arising out of Order-in-Appeal No. 16/2014 (M-II) (P) dated 23.12.2014 passed by the Commissioner of Central Excise (Appeals II), Chennai)

M/s. Kapil Additive Appellant

Vs.

Commissioner of Central Excise, Chennai II Respondent

Appearance

Ms. Sridevi, Advocate for the Appellant

Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

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Honble Shri D.N. Panda, Judicial Member

Date of Hearing / Decision: 07.11.2016

Final Order No. 42141 / 2016

The issue involved in this appeal is whether the CENVAT credit availed on the input services utilised for manufacture of goods at nil rate of duty supplied to the SEZ as well as exported shall entitle the appellant to the refund of the CENVAT credit under Rule 5 of CENVAT Credit Rules, 2004.

2. On behalf of the appellant, it was submitted that there is an exception provided under Rule 6(6) of the CENVAT Credit Rules, 2004 to resolve the above issue. The goods supplied to SEZ come in par with the export of goods. Once the goods are not liable to tax, if otherwise attempted to be taxed denying CENVAT credit to be refunded, the cost of the goods shall undergo revision upward and will result in export of taxes which is not permitted in international trade practice.

3. Learned Authorised Representative for Revenue says that supply to SEZ at nil rate of duty does not ipso facto makes goods exempted goods. Therefore, Rule 5 does not apply and appellant is not entitled to refund.

4. Heard both sides and perused the records.

5. There is an exception provided in sub rule (6) of Rule 6 of CENVAT Credit Rules, 2004 to the application of sub-rule (1) to (4) thereof. Clearances made to SEZ are not governed by the denial provision. Appellants submission is therefore certainly correct to say that any attempt to deny the refund of input credit shall make the services or goods exported costlier and will amount to export or deemed export of taxes which is not permitted in international trade practice as well as supply to SEZ domestically. Therefore, denial of refund to the appellant by the application of Rule 5 of CENVAT Credit Rules, 2004 is not reasonable, for which, the order of the authority below is set aside and appeal is allowed. The authority below granting refund shall act in accordance with law looking to the law on limitation, if any, applicable.

6. In the result, appeal is allowed.

(Dictated and pronounced in open court)

(D.N. Panda)

Judicial Member

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