(2023) 06 CESTAT CK 0022

Customs, Excise And Service Tax Appellate, Mumbai

Case No: Service Tax Appeal No. 87574 Of 2019

Vistex Asia Pacific P Ltd		APPELLANT
	Vs	
Commissioner Of CGST, Mumbai South		RESPONDENT

Date of Decision: June 13, 2023

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 5

Hon'ble Judges: Ajay Sharma, Member (J)

Bench: Single Bench

Advocate: Parth Navandar, Vinod Kumar

Final Decision: Allowed

Judgement

Ajay Sharma, Member (J)

1. This appeal has been filed from the impugned Order dated 18.01.2019 passed by the Commissioner of Central Tax (Appeals-I), Mumbai by which

the appeal filed by the appellant was rejected.

2. The period involved herein is July, 2016 to September, 2016; and the issue involved herein is about the calculation prescribed under the formula as

per Rule 5 of Cenvat Credit Rules, 2004 r/w notification No. 27/2012-CE(NT) for calculating the admissible refund.

3. The appellants have filed the refund claim for an amount of Rs.7,09,489/- for unutilized Cenvat credit accumulated in their Cenvat Account due to

exports in terms of Notification No.5/2006-CE(NT) as amended by Notification No. 27/2012-CE(NT) r/w Rule 5 ibid. The Adjudicating Authority vide

Order-in-Original dated 12.6.2017 sanctioned the refund of Rs.3,75,613/-and rejected the balance amount of Rs.3,33,876/- and the same was upheld

by the learned Commissioner (Appeals) by way of impugned order.

4. I have heard learned Chartered Accountant for the Appellant and learned Authorised Representative for the Revenue and perused the case

records including the written submissions/synopsis alongwith case laws placed on record. Identical issue of the Appellant herein for the immediate

prior period i.e. April, 2016 to June, 2016 came up for consideration before the very same adjudicating authority 3-4 months prior to the passing of the

Order-in-Original herein, in which the said authority vide Oder-in-Original dated 15.2.2017 granted refund to the appellant as per the calculation they

are claiming under rule 5 ibid. The said order-in-original has also been placed on record by the learned Chartered Accountant during the course of

hearing. Time and again it has been held by the Tribunal that the revenue is not permitted to take contrary view on identical issue because if they are

permitted to do so then the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary. This contrary view

of the very same adjudicating authority strengthens the submission of the appellant that they were not heard by the said authority before rejecting the

refund partly. Had the said authority heard them properly then the Order-in-Original herein would have been passed in conformity with the earlier

order of the same authority in appellantâ€™s own case. Therein the appellant was permitted to deduct the utilized credit out of the total/net Cenvat

credit and balance unutilized Cenvat credit was refunded to them, which according to me is the correct view. Applying the same on the facts of the

instant matter, the total/net Cenvat credit is Rs.11,97,619/- whereas the credit utilized by is Rs.4,88,130/-and if we deduct the credit utilized from the

total Cenvat credit then the balance would be [Rs.11,97,619 â€" Rs.4,88,130] Rs.7,09,489/-, which has been claimed by the appellant but rejected by

both the authorities below. The lower authority has totally erred in deducting the utilized Cenvat credit i.e. Rs.4,88,130/- after getting the total refund

amount i.e. Rs.8,63,743/- as per formula prescribed u/r.5 ibid. The first appellate authority also seems to have decided the appeal mechanically without

properly looking into the issue and also the submission of the appellant that they were not heard by the lower authority.

5. In view of the discussions made hereinabove, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential

relief, if any.