2013 (2) ECS (46) (Tri - Ahd)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad.

M/s Bajaj Food Ltd.

Versus

Commissioner of Central Excise Ahmedabad –II

Appeal No.	:	E/1030 to 1034/11
Arising out	:	OIANo. 168-172/2011(AHD-II)/CE/ID/COMMR(A)/AHD Dated 13.07.2011
Passed by	:	Commissioner of Central Excise & Customs (Appeals),

Appellant(s):

M/s Bajaj Food Ltd.

Versus

Respondent(s):

Commissioner of Central Excise Ahmedabad –II

Represented by :

Shri R.R. Dave, Advocate – Appellant
Shri J. Nagori, AR – Respondent

CORAM:

Hon'ble Mr. H.K. Thakur, Member (Technical)

Date of Hearing: 07.05.2013
Date of Order: 07.05.2013

ORDER No. A/10647 - 10651/WZB/AHD /2013 DATED 07.05.2013

"It is not a disputed fact that the product of Peanut Butter manufactured by the appellant is fully exempted. Further, Rule – 5 of the cenvat credit clearly provide that the goods exported should be either exported under Bond or on a letter of under taking. It is also not disputed by the appellant that the exempted goods are neither exported under bond nor under a letter of undertaking. In view of the above observations, cenvat credit Rules are not applicable to the appellant's case and no refund under Rule 5 of Cenvat Credit Rules 2004 is admissible because no credit accumulation is possible in view of the provisions of Rule 6(1) of the Cenvat Credit Rules" [Para7]

Per:H.K. Thakur:

1. These appeals have been filed by the appellant M/s. Bajaj Food Ltd. against OIA No. 168 – 172/2011 (AHD -II)/CE/ID/COMMR (A)/AHD dated 13.07.2011.

2. The issue involved in these appeals is that the appellant is engaged in the manufacture of Peanut Butter which is exempted fully from Central Excise duty by virtue of Notification No. 3/2006 – CE dated 11/03/2006. The appellant claimed refund of duty paid on inputs used in the manufacture of Peanut Butter which is subsequently exported. The refund claims were filed under Section 11 B of the Central Excise Act, 1944 read with Rule 5 of the Cenvat Credit Rules. 2004. The said refund claims were rejected by the Original Adjudicating Authority which was confirmed by the Order in Appeal dated 13.07.2011.

3. Heard both the sides.

4. Shri R.R. Dave, Id. Consultant on behalf of the appellant argued that since Peanut Butter is exported out of India, all the input duty paid is required to be refunded to them under Section 11 B of the Central Excise Act and Rule 5 of the Cenvat Credit Rules, so that there could be zero rated exports. He relied upon

the order dated 25.11.2011 in their own case decided by CESTAT, WZB, Ahmedabad in Appeal No. E/1222 – 12224/2010 dated 25th November, 2011.

5. Learned A.R. on the other hand argued that the end product of Peanut Butter is fully exempted, therefore, as per provisions of Rule 6(1) of the Cenvat Credit Rules, 2004, no credit is admissible and accordingly no refund is admissible to the appellant under Rule 5 of the Cenvat Credit Rule. It was also argued that refund under Section 11 B of the Central Excise Act cannot be entertained as the refund sought by appellant is not with respect to duty refund which he has paid. He further relied upon the judgment of Nemlaxmi Books (India) P. Ltd. vs. Commissioner of C. Ex., Surat [2011 (23) STR 367 (Tri. Ahmd)] and argued that even if it is presumed that the appellant is entitled to Rule – 5 of Cenvat Credit refund the same is required to be filed periodically, which was not done by the appllent.

6. After hearing both sides at length and perusal of records, it is observed that the appellant has received duty paid inputs used in the manufacture of fully exempted product Peanut Butter which is exported out of India. Appellant is seeking refund of such duty paid inputs either under Rule – 5 of the Cenvat Credit Rule, 2004 or as per provisions of Section 11 B of the Central Excise Act, 1944. In this regard, it is relevant to see Rule 6 (1) of the Cenvat Credit Rules which reads as follows:

> "Rule – 6. Obligation of manufacturer of dutiable and exempted goods and Provider of taxable and exempted services:
>
> (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub – rule (2)
>
> Provided that CENVAT credit on inputs shall not be denied to job worker referred to in rule 12 AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule."

7. It is evident from the above provisions that no cenvat credit is admissible if the duty paid inputs are used in the manufacture of exempted goods. It is not a disputed fact that the product of Peanut Butter manufactured by the appellant is fully exempted. Further, Rule – 5 of the cenvat credit clearly provide that the

goods exported should be either exported under Bond or on a letter of under taking. It is also not disputed by the appellant that the exempted goods are neither exported under bond nor under a letter of undertaking. In view of the above observations, cenvat credit Rules are not applicable to the appellant's case and no refund under Rule 5 of Cenvat Credit Rules 2004 is admissible because no credit accumulation is possible in view of the provisions of Rule 6(1) of the Cenvat Credit Rules. So far as reliance of the appellant upon their own judgment dated 25.11.2011 in CESTAT in Appeal No. 1222 – 1224 is concerned, it is observed from para 4 of the said order that refund of credit was allowed when the unit was still working under 100% EOU category and was not operating under DTA category. Therefore, the facts of that case and the period is different than the facts and period of the present proceedings. Appellant has also taken in the ground of appeal that rejecting their refund claim is against the policy of the Central Government while giving several incentives and benefits to the exporters. It is correct that exporters should be given a zero rate export environment as per Central Government Export Policies and for every situation there is a procedure prescribed. There is procedure in place for claiming refund of duty paid on inputs which are used in the manufacture of fully exempted export products subject to appellant has not followed such procedures and, therefore, cannot claim the benefit of Rule 5 of the Cenvat Credit Rule when the same is not applicable to the appellant case.

8. So far as refund claim and applicability of Section 11 B of the Central Excise Rule, 1944 is concerned, it is observed from Section 11 B that refund under Sec. 11 B can be claimed by any person only if he has paid the duty. In the present proceedings, the appellant is claiming refund of duty paid on inputs which are not manufactured by them. Appellant has got no 'locus standi' to seek refund of duty paid on input under Section 11 B of the Central Excise Rules, 1944, when he has not paid such a duty. Based on the observations, the appeals filed by the appellant are rejected.

(Operative portion of the order pronounce)