

**Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad**

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 10676 of 2019

[Arising out of Order-in-Original No OIO-SUR-EXCUS-000-COM-36-18-19 dated 20.03.2019 passed by Commissioner (Appeal) of Central Excise & ST, Surat]

M/s. Vineet Polyfab Pvt Limited

.... Appellant

Block No 1049, Village
Tarkeshwar, Mandvi
SURAT - GUJARAT.

VERSUS

Commissioner of Central Excise & ST, Surat

.... Respondent

NEW BUILDING...OPP. GANDHI
BAUG, CHOWK BAZAR,
SURAT, GUJARAT- 395001

APPEARANCE :

Shri Willingdon Christian, Advocate for the Appellant

Shri L. Patra, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

FINAL ORDER NO. A/11109 / 2019

DATE OF HEARING : 11.07.2019

DATE OF DECISION: 11.07.2019

RAMESH NAIR :

The brief facts of the case are that the appellants are engaged in the manufacture of Polyester Texturised Yarn classifiable under sub heading 54023300 of the First Schedule of the Central Excise Tariff Act 1985. During the period April 2016 to June 2017, the appellant have cleared the goods under exemption Notification 30/2004-CE dated 09.07.2004. At the same time they have claimed the Cenvat credit in respect of inputs used in the manufacture of such final products. The case of the department is that, since the appellant have claimed Cenvat credit, they have violated the

condition of Notification No. 30/2004-CE dated 09.07.2004 which stipulates that "no credit of such excise duty or additional duty of customs on inputs has been taken by the manufacturer of such goods". Accordingly, the appellant are not entitled for exemption Notification No. 30/2004-CE. Demand of duty by denying the exemption was confirmed and penalty was imposed by the order-in-original. Therefore, the present appeal.

2. Shri Willingdon Christian, Ld. Counsel appearing on behalf of the appellant submits that though the appellant have availed Cenvat credit on the inputs used in the goods cleared under Notification No. 30/2004-CE but at the time of removal of such exempted goods, they have paid an amount equal to 6%, as provided under Rule 6 (3) of Cenvat Credit Rules, 2004. He submits that reversing 6% amount as per Rule 6 (3), amounts to non-availment of Cenvat credit in terms of sub rule (3D) of Rule 6 of Cenvat Credit Rules, 2004. Therefore, even though at the time of receipt of inputs, the appellant claimed Cenvat credit but by reversing 6%, the condition of notification stands complied with. In support of his argument, he placed reliance on the following judgments:-

(a) 2016 (338) ELT 614 (Tri.) - Spentex Industries Limited vs. CCE

(b) 2000(123) ELT 1110 (Tri.) - Life Long Appliances Limited vs. CCE
2006 (196) ELT A144 (SC)

(c) 2015 (327) ELT 281 (Tri.) - Sita Singh & Sons Pvt. Limited vs. CCE

(d) 2008 (232) ELT 580 (Guj.) - CCE vs. Ashima Dyecot Limited

(e) 2015 (325) ELT 234 (SC) - CCE vs. Precot Meridian Limited

3. Shri L.Patra, Ld. Asst. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that in the Notification No. 30/2004-CE, no such provision is made that if reversal is

made under Rule 6 it will be as good as non availment of credit. The condition in the notification is very clear and according to which the appellant should not have availed Cenvat credit and therefore, it is a clear violation of condition of the notification. He also submits that as per explanation of Rule 3 of Cenvat Credit Rules, any rule or notification will prevail over the Cenvat Credit Rules. Therefore, even though there is provision in sub-Rule (3D) of Rule 6, the condition prescribed in notification will prevail over sub Rule (3D). He submits that the notification should be interpreted strictly. In the present case the notification is very clear and there is no scope of any interpretation. As per plain reading of the notification, the appellant was not supposed to avail Cenvat credit. In support of his arguments, he placed reliance on the following judgments:-

- (a) Eagle Flask Industries Limited vs. CCE, Pune – 2004 (171) ELT 296 (SC)
- (b) CCE, Mumbai vs. Bombay Dyeing & Mfg. Company Limited – 2007 (215) ELT 3 (SC)
- (c) Sports & Leisure Apparel Limited vs. CCE, Noida – 2011 (271) ELT 529 (Tri. Del.)
- (d) CCE, New Delhi vs. Hari Chand Shri Gopal – 2010 (260) ELT 3 (SC)

4. We have carefully considered the submissions made by both sides and perused the record. We find that though the appellant have availed Cenvat credit in respect of inputs used in the manufacture of Polyester Texturised Yarn and cleared under nil rate of duty but it is also a fact that appellant have reversed the amount equal to 6% as provided under Rule 6(3) of Cenvat Credit Rules, 2004. With reference to similar notifications, such

condition of non-availment of credit, a specific provision is made by inserting sub Rule (3D) in Rule 6 of Cenvat Credit Rules, 2004 which reads as under:-

“Payment of an amount under sub-Rule (3) shall be deemed to be Cenvat credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no Cenvat credit of inputs and input services shall be taken.”

5. From the plain reading of the above provision, it is observed that the provision of sub Rule (3D) was specifically provided under the statute to meet with the situation as existing in the present case. The appellant have reversed or paid the amount in terms of sub Rule (3) of Rule 6, therefore, as per sub Rule (3D), it will amount to not taking of Cenvat credit and when this be so, the condition of Notification No. 30/2004-CE stands complied.

6. The very same issue has been considered by this Tribunal in the case of *Spentex Industries Limited (supra)* wherein the following order was passed:-

“5. The short point for decision is the eligibility of the appellant for exemption under Notification No. 30/2004-C.E. when they have reversed 6% of the value of exempted goods in terms of Rule 6(3)(i). We find the appellants claim on the applicability of sub-rule (3D) of Rule 6 is legally sustainable. The said sub-rule provides for a deeming provision to the effect that payment of amount under sub-rule (3) should be considered as credit not taken for the purpose of such exemption notification. The appellant’s case is covered by the said provision as pointed out by the Id. Counsel for the appellant even before the introduction of the said sub-rule in 2011. The Tribunal held that payment of amount under sub-rule (3)(i) of Rule 6 will make the assessee eligible for claiming such exemption as the present one. We find the case laws relied on by the Id. Counsel for the appellants clearly support their contention. The decisions of the Tribunal in *Life Long Appliances Ltd. (supra)*, was affirmed by the Hon’ble Supreme Court reported at 2006 (196) E.L.T. A144 (S.C.). We find the original authority had fallen in error in not considering the said sub-rule (3D) and relying on explanation (3) of Rule 3. We find the said explanation has no relevance to the facts of the present case in view of the specific provision of sub-rule (3D) of Rule 6. In view of above analysis and findings,

we find the impugned order is unsustainable, and accordingly, set aside the same. The appeal is allowed.”

Ld. Counsel Shri Willingdon Christian invited our attention to the reply under RTI enquiry that the aforesaid decision has been accepted by the department. We find that Tribunal has considered the very same issue and also interpreted the explanation given in Rule (3) as well as the provision of sub Rule (3D) of Rule 6 and came to the conclusion that once an amount under Rule 6(3) has been paid, the condition of notification has been complied.

7. In view of above discussion and applying the ratio of above decision, we find that the demand, denying the exemption Notification No. 30/2004-CE, does not sustain. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)