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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12014 of 2018

(Arising out of OIA-CCESA-SRT-APPEALS-PS-845-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Bharat Resins Ltd **........Appellant**
Unit-ii, Plot No. A-1/284/4/Gidc,
Industrial Estate, Umbergaon,
Valsad, Gujarat

VERSUS

C.C.E. & S.T.- Surat-i **.......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Sh. Amal Dave, Advocate for the Appellant
Sh. Rakesh B. Bhashkar, Superintendent (AR) for the Respondent

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

Final Order No. A/12204 / 2019

DATE OF HEARING: 11.11.2019
DATE OF DECISION:11.11.2019

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in manufacture of dutiable and exempted products. They have availed Cenvat credit in respect of input and input service. They are also carrying out the trading activity in which the common input service also used. The case of the department is that since the common input service on which credit was availed was used in respect of trading turn over, appellant is required to pay 6% in terms of Rule 6(3). Accordingly, the demand of an amount equivalent to 6% of sale value of trading was confirmed, the same was upheld by the Commissioner (Appeal), therefore, the present appeal is filed.

2. Sh. Amal Dave Learned Counsel appearing on behalf of the appellant submits that the appellant have reversed the Cenvat Credit attributed to the trading activity along with interest, after the adjudication of the Show Cause Notice. Therefore, the reversal of Cenvat Credit along with interest is in conformation of Rule 6(3A) of Cenvat Credit Rules, 2004. Therefore, demand of 6% under Rule 6(3) is not sustainable. He placed reliance on the following judgements.

- Commr. V/s. Ashima Dyecot Ltd. 2009 (240) ELT A41 (S.C.)

- Unimed Technologies Ltd. V/s CCE, Vapi 2012 (278) ELT 461 (Tri.-Ahmd.)
- Swiss Parenterals Pvt. Ltd. V/s CST, Ahd.2014 (308) ELT 81 (Tri.-Ahmd.)
- Bajaj Consumer Care Ltd.V/s Commr of C.Ex., CUS. & S.T., Hyderabad-I 2016 (41) S.T.R. 523 (Tri.- Bang.)
- Commissioner of C.Ex., Bangalore-III V/s Himalaya Drug Company 2011 (271) ELT. 350 (Kar.)
- Mercedes Benz India(P) Ltd. V/s Commissioner of C.Ex.,Pune-I 2015(40) S.T.R. 381(Tri.-Mumbai)

3. Sh. Rakesh Kumar Bhashkar, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He also relied upon the judgment wherein, the assessee�much‘s Civil Appeal was dismissed by the Hon'ble Supreme Court reported at Lally Automobiles Pvt. Ltd. Vs Commissioner 2019 24 G.S.T.L., J 115 SC.

4. Heard both the sides and perused the record I find that though the appellant had availed Cenvat Credit on common input service which is attributed to both dutiable manufacturing goods as well as the trading activity, but, after the adjudication of the Show Cause Notice the appellant have reversed Cenvat Credit along with the interest attributed to trading activity. With this fact the situation became as if no Cenvat Credit was taken right from the date of taking credit by the appellant. This has been ruled by the Hon'ble Supreme Court in the Case of following judgment.

- 1996 (81) E.L.T. 3 (S.C.) M/s. Chandrapur Magnet Wires (P) LTD. V/s COLLECTOR OF C. EXCISE, NAGPUR.

5. This tribunal in various subsequent cases held that once the Cenvat Credit along with interest has been paid, no demand of 6% can be made. In the case of Mangal Textiles Pvt. Ltd., this tribunal vide Order No. A/12/WZB/AHD/2011 Dated 16.12.10 passed the following order.

> ***"5.*** *We find that the issue before Hon'ble Supreme Court in the case of M/s. Chandrapur Magnet (Wires) Pvt. Ltd. was not about reversal being prior or after the removal. The dispute before the Hon'ble Apex Court was as if such reversal would amount to as if no credit was availed. It was under these circumstances that the expression "reversal by the appellant before clearance of the product" was used. We further note that the Tribunal in case of M/s. Ashima Dyecot Ltd. has held that the reversal even at the time of disposal of the appeal before Tribunal, would amount to satisfaction of the condition. The said decision of the Tribunal*

> *Stand confirmed by Hon'ble High Court of Gujarat as reported in 2008 (232) E.L.T. 580 (Guj.) = 2008 (12) S.T.R. 701 (Guj.). The appeal filed by the Revenue against the above decision stand rejected by Hon'ble Supreme Court as reported in 2009 (240) E.L.T. A41 (S.C.). We further note that Hon'ble High Court of Gujarat has also approved the Tribunal's decision in the case of M/s. Maize Products as reported in 2009 (234) E.L.T. 431. M/s. Maize Products offered to reverse the Cenvat Credit at the appeal stage before Tribunal and such offer to reverse was accepted by the Tribunal. The Hon'ble High Court of Gujarat approved the above course adopted by the Tribunal.*
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> ***6.*** *Similarly, we find that Hon'ble High Court of Allahabad in the case of M/s. Hello Minerals Water (P) Ltd. v. UOI as reported in 2004 (174) E.L.T. 422 (All.) has observed that the benefit of Notification granting exemption on the final product has to be extended even if the reversal of credit on the input was done at the Tribunal's stage. The Hon'ble High Court further observed that reversal of credit for availing benefit of the notification is important and the time of such reversal was immaterial. As such, the Tribunal was not justified in taking a view that reversal of credit having been made by the petitioners after removal of final product will make him dis-entitled to the benefit of Notification No. 15/94-C.E. involved in that case. The appellant having reversed the major part of the credit and having offered to reverse the balance credit, would be entitled to benefit of Notification No. 30/94, in the light of the law declared in the above decision. It may be mentioned here that as per the appellant such credit was lying in their books of account and was not utilized, in which case, no interest or penalty can be upheld against them.*
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> ***7.*** *In view of the above, the impugned order is set aside and appeal allowed with consequential relief to the appellant."*

In view of the various judgment cited by the Learned Counsel and in particular in the above decision of the tribunal, identical issue had been considered and demand was dropped. Considering the fact that the Cenvat Credit attributed to the exempted/trading activity has been reversed. As regards the judgments cited by the Learned A.R. in the case of Lally Automobiles Pvt. Ltd.(supra), I find that in the said case it was held that Cenvat Credit attributed to the trading activity has to be deducted. In present case also the appellant have reversed the credit along with interest attributed to the trading activity, therefore, the decision in the case of Lally Automobile Pvt. Ltd. is not against the assessee in the given fact.

6. It is observed that though it is the appellants claim that the Cenvat Credit attributed to the trading activity along with interest has been paid and the copy of Cenvat account for the credit reversal as well as challan for the payment of interest has been enclosed. Considering this, the demand of 6% is not sustainable.

7. Accordingly, the impugned order is set aside, appeal is allowed. Revenue is at liberty to verify the correctness of the reversal of credit and payment of interest and if anything contrary is noticed, revenue may file the application for restoration of appeal for appropriate order.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul