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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.13226 of 2013
(Arising out of OIA-PJ/258-262/VDR-I/2013-14 dated 29/07/2013passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

Panoli Intermediate India Pvt Ltd **........Appellant**
Plot No. 122/1 & 2,
G.I.D.C. Estate, Nandesari,
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

WITH

- **i) Excise Appeal No. 13227 of 2013 (Panoli Intermediate India Pvt Ltd);**
- **ii) Excise Appeal No. 13228 of 2013 (Panoli Intermediate India Pvt Ltd);**
- **iii) Excise Appeal No. 13229 of 2013 (Panoli Intermediate India Pvt Ltd);**
- **iv) Excise Appeal No. 13230 of 2013 (Panoli Intermediate India Pvt Ltd);**

APPEARANCE:
Sh. Mrugesh Pandya (Adv.)for the Appellant
Sh. Sanjiv Kinker, Superintendent (AR)for the Respondent

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

Final Order No. A/ 10024-10028 /2021

DATE OF HEARING: 01.12.2020
DATE OF DECISION: 18.01.2021

RAJU

These appeals have been filed by M/S Panoli Intermediates India Pvt Ltd against in demand of reversal Cenvat Credit, Interest, and Imposition of penalty.

2. Learned Counsel Pointed out that all the 5 Appeals involved common issue. The issue involved in the appeal is whether Rule 6 (3)(b) and Rule 6 (3)(i)(ii) of Cenvat Credit Rules,2004 will be applicable to the removal of by-products (i.e spent sulphuric Acid) which are removed under serial No 32 of

Notification No. 04/2006 –CE dated 1st March,2006 to fertilizer manufacturing units following the procedure laid down under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods)Rule 2001. The Appellant, during the material period, was engaged in the manufacture of dutiable product viz. Dichloro Nitro Benzene, Peptide Nuclei Acid, Ortho Nitro Chloro Benzene and Para Nitro Chloro Benzene.

2.1 Notices were issued for recovery of CENVAT under Rule 6(3)(b) and Rule 6(3)(i)(ii) of Cenvat Credit Rules,2004 by treating the removal of Spent Sulphuric Acid under Notification No.04/2006-CE dated 1st March,2006 as exempted goods.

2.2 The Adjudicating Authority while passing the OIO dated 14.2.13 did not accept the contention of the Appellant that the by-Products is removed at Nil rate of duty on receipt of Annexure-1 from fertilizer manufacturing units under Notification No. 4/2006 dated 1.3.2006. Further, the Adjudicating Authority emphasized that Rule 6(6) of CCR, 2004 does not stipulate that goods cleared under Notification No.4/2006 dated 1.3.2006 have not to reverse Cenvat Credit as per Rule 6(3).

2.3 Learned Counsel argued that the issue is no longer res integra as there are large number of judgments by the High Courts and CESTAT holding that upon removal of Spent Sulfuric Acid an assessee is not required to reverse any amount under Rule 6(3)(b) of the Cenvat Credit Rules,2004. The case of the Appellant is squarely covered in favour of the Appellant by the following decisions:

1) Nirma Ltd. v/s. CCE, Ahmedabad -2012 (276) ELT 283 (Tri-Ahmd)

2) Commissioner v/s. Nirma Ltd. – 2014 (299) ELT A24 (Guj. High Court)

3) CCE, Ahmedabad –III v/s. Nirma Ltd- 2012 (281) ELT 654 (Guj.)

4) Commissioner Vs Sterling Gelatin -2015 (320) ELT (SC)

5) CCE, Indore v/s. SRF Ltd – 2008 (223) ELT 508 (Tri. Del.)

6) Commissioner v/s. SRF Ltd – 2010 (255) ELT A13(SC)

7) CCT, Guntur GST v/s. The Andhar Sugars Ltd.- 2018(5) TMI 862 CESTAT Hyderabad

8) ISMT Ltd. v/s. CCE, Pune – 2015 (329) ELT 919(Tri. Mumbai)

9) UOI v/s. Hindustan Zinc Ltd. -2014 (303) ELT 321 (SC)

10) A.R. Sulphonates Pvt Ltd. v/s. CCE, Thane-I -2016 (344) ELT 363 (Tri.Mumbai)
11) JSW Steel Ltd. v/s. CCE, Navi Mumbai -2016 (332) ELT 363 (Tri. Mumbai)

12) Chalthan Vibhag Khand Udyog Sahakari Mandali Ltd. v/s CCE & ST, Surat-I-2016 (339) ELT 413 (Tri. Ahmd.)

13) Rallies India Limited Vs Union of India 2009(233) E.L.T 301(Bombay High Court)

14) Sai Sulphonate (P) Ltd. v/s. CCE, Kolkata-III- 2017 (345) ELT 156(Tri. Kolkata)

3. Learned Authorized Representative relies on the Impugned Order.

4. We have considered the rival submissions, we find that the appellant are engaged in manufacture of Chemicals namely Dichloro Nitro Benzene, etc. The appellants are availing Cenvat Credit in respect of certain inputs and inputs services during the process of manufacture Sulphuric Acid also comes into existence. The appellants were clearing such Sulphuric acid to manufacturers of fertilizers by availing benefit of Procedure Chapter X (Cleared at Nil Rate of Duty). Revenue is of the opinion that since common inputs and input services have been used for generation of Sulphuric Acid and appellant has not maintained separate records, the Appellant is liable to pay 5% on the value of clearances of Sulphuric Acid cleared under exemption Notification No 4/2006-CE 01.03.06 in terms of Rules 6(3) of the Cenvat Credit Rule.

4.1 The appellants have contended that they procured Sulphuric Acid from outside and used the same in the process of manufacturing their final products. What is left after the process is nothing but the spent sulphuric acid which is waste/refuse. They claimed that they have spent sulphuric acid is not a by-product. The appellant has claimed that spent sulphuric acid is the residue of the input sulphuric acid procured from outside and used in the processing within the factory. The appellant claimed that they had cleared only such Sulphuric Acid under Notification No. 4/2006 – CE.

4.2 Learned Counsel has contended that the issue in the instant case is squarely covered decision cited by him. We find that identical issue was decided by the tribunal in the case of Nirma Limited – 2012(276) ELT 283. In the said decision tribunal has observed as under :-

"5. *We find that the issue is no res integra and stand settled by earlier order of the Tribunal in same appellant's case, being Order No. A/2350/WZB/ AHD/2009, dt. 12-11-09 [2010 (261) E.L.T. 635 (Tri. - Ahmd.)]. The said order was subsequently followed by the Tribunal in the case of CCE, Vadodara v. M/s. Nirma Ltd., being Order No. A/1810-1812/WZB/AHD/2010, dt. 15-7-10. For better appreciation, we reproduce relevant paragraph from the above order.*

> *7. After hearing both the sides we find that the issue is no more res integra. Though Commissioner (Appeals) has held in favour of the assessee by observing that as spent sulphuric acid was being cleared by following the procedure under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, there is no requirement of payment of 10% of value of exempted goods at the time of clearance of the same. For the above proposition he has relied upon the Tribunal's decision in the case of CCE Indore v. S.R.F. Ltd. reported in 2008 (223) E.L.T. 508 (Tri. - Del.). Apart from the fact that the appeal filed by the Revenue against the above order stands dismissed by the Hon'ble Supreme Court we find that the issue is otherwise also covered by the Bombay High Court's judgment in the case of Rallis India Ltd. Admittedly duty is being sought to be recovered on spent sulphuric acid, which is nothing but by-product. The Hon'ble Bombay High Court in the case of Rallis India Ltd. v. UOI reported in 2009 (233) E.L.T. 301 (Bom.) has reversed the Larger Bench decision of the Tribunal and has held that the provisions of Rule 6 are not applicable to by-products.*

6. *In fact, we find that the Commissioner (Appeals), in his impugned order, while allowing the Stay Petition of the appellant, has observed that the issue is covered by the earlier order of the Tribunal in the same appellant's case and has thus granted unconditional stay. For better appreciation, we reproduce Para 6 of Commissioner (Appeals)'s order.*

> *"6. I have carefully gone through the case records, submissions made in the miscellaneous application, memorandum of appeals and record of personal hearing. I find that in the appellant's own unit situated at Mandali (Mehsana), the Hon'ble CESTAT Ahmedabad vide Order No. A/2350/ WZH/AHD/2009 (M/1384/WZB/AHD/2009), dt. 12-11-09, rejected the Revenue's appeal following the decision passed in the case of M/s. Rallis India Ltd. v. UOI reported at 2009 (233) E.L.T. 301 (Bom.) and in the case of M/s. J.K. Malt Products Pvt. Ltd. v. CCE, Ahmedabad reported at 2009 (92) RLT 839 (CESTAT-Ahmd.). Considering the said decision, I dispense with the pre-deposit under the proviso to Section 35F of*

> *Central Excise Rules, 1944 and proceed to decide the appeal on merits."*

7. *However, while deciding the main appeal, the appellate authority has not followed the earlier order, but has observed as under :*

> *"8.4 Hon'ble CESTAT Ahmedabad in Order No. A/2350/ WZB/AHD/2009, (M/384/WZB/AHD/2009), dt. 12-11-09, placed reliance on the decisions passed in the case of M/s. Rallis India Ltd. v. UOI reported at 2009 (233) E.L.T. 301 (Bom.) and in the case of M/s. J.K. Malt Products Pvt. Ltd. v. CCE, Ahmedabad. I find that the ratio of Rallis India Ltd. was misplaced in the said order as in the Rallis case, the mother liquor arising in the manufacture of Gelatin is admittedly a waste on which no Excise duty is payable in view of Rule 57D. The mother liquor was further processed to manufacture exempted final product, viz. Phosphory 'A' and 'B', and the Revenue has not disputed that the waste mother liquor arising in the manufacture of Gelatin is a final product. Moreover, this judgment relates to erstwhile MODVAT Rules which are no more applicable and new CENVAT Credit Rules are operative. However, in the appellant's case, the Spent Sulphuric Acid has been admitted by the appellant as a final product generated while manufacturing detergent products and cleared on payment of duty and as exempted goods under different notification for use in the manufacture of fertilizers. Hon'ble Supreme Court in the case of M/s. Nirma Chemical Works reported at 2002 (146) E.L.T. 485 (S.C.), has also held that Spent Sulphuric Acid is to be classified under Heading 28.07 of the Tariff item. Since the appellant is manufacturing exempted and dutiable Spent Sulphuric Acid, Rule 6 of Cenvat Credit Rules, 2004 shall apply. I, therefore, differ from Hon'ble CESTAT's order No. A/2350/WZB/AHD/2009, dt. 12-11-09 passed in appellant's own case as the ratio of above decision cannot be applied to the instant case."*

8. *As is clear from the above reproduced part of Commissioner (Appeals)'s order, he is not disputing the fact that the issue is covered by the earlier decision of the Tribunal. However, he has observed that the Tribunal's order relied upon on Hon'ble Mumbai High Court's judgment in the case of M/s. Rallis India Ltd. [2009 (233) E.L.T. 301 (Bom.)], which was misplaced. However, we find that as contended by the ld. Advocate appearing for the appellant, if the Revenue was aggrieved with the earlier order of the Tribunal, it was open for them to file an appeal thereagainst before higher appellate forum. The judicial discipline requires the lower authority to follow the declaration of law by higher appellate forum. Reference in this regard may be made to Hon'ble Mumbai High Court's judgment in the case of CCE, Nasik v. M/s. Jain Vanguard*

> *Polybutlene Ltd. as reported in 2010 (256) E.L.T. 523 (Bom.) as also the Tribunal's decision in the case of M/s. Gujarat Composite Ltd. v. CCE, Ahmedabad as reported in 2006 (195) E.L.T. 310 (Tri. - Mum.). As such, it was not open to the Commissioner (Appeals) to take a different view when an identical issue was decided in same party's case by the earlier order of the Tribunal. Even otherwise, we find that the Commissioner (Appeals)'s reference to Hon'ble Supreme Court's judgment in the case of M/s. Nirma Chemical Works [2002 (145) E.L.T. 485 (S.C.)] was on altogether different ground as it dealt with classification of Spent Sulphuric Acid and has got nothing to do with the provisions of Rule 6(3) of Cenvat Credit Rules.*
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> ***9.*** *We, accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellant."*

The said decision has been approved by Hon'ble High Court of Gujarat is reported as under 2014 (299) ELT A24 (Guj.)

4.3 In view of the fact that issue involved is squarely covered by the decision of the tribunal, which has been approved by the Hon'ble High Court as well, the impugned orders cannot be sustained.

5. In view of above, the impugned order is set aside. The appeals are consequently allowed.

(Pronounced in the open court on 18.01.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Geeta