

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

REGIONAL BENCH-COURT NO. 3

Excise Tax Appeal No. 719 of 2012- DB

(Arising out of OIO-07/COMMR/RAJU/AHD-II/2012 dated 06/06/2012 passed by Commissioner of Central Excise-AHMEDABAD-II)

West Coast Pharmaceutical Works Ltd

Meldi Estate, Near Prasang Party Plot,
Opp. Sola Bhagwat, Shayona City Road, Gota,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat- 380009

.....Respondent

APPEARANCE:

Shri, Amal Paresh Dave, Advocate for the Appellant

Shri, Tara Prakash, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/11407/2023

DATE OF HEARING: 01.06.2023
DATE OF DECISION: 03.07.2023

RAMESH NAIR

The issue involved in the present case is that whether the Adjudicating Authority was right in confirming an amount equivalent to 5%/ 10% of the value of exempted goods when the appellant had already reversed proportionate Cenvat Credit.

2. Shri, Amal Dave Learned Counsel appearing on behalf of the appellant at the outset submits that in the appellant's own case only for the different period on the same issue remanded the matter vide final order no A-13152/131153-2017 dated 06-10-2017. He request that this matter may also be remanded for deciding the matter as per the observation made by this tribunal in their own case cited (Supra).

2.1 He further submits that this issue was otherwise considered in various judgments and the tribunal has taken a view that when the proportionate credit was reversed the demand of 5%, 10% under Rule 6(3) of Cenvat Credit Rules shall not sustain. He placed reliance on the following judgment:

- Bombay Minerals Ltd. V/s. CCE, Rajkot, 2019(29) GSTL 361 (Tri.-Ahmd.)
- Welspun Corp. Ltd. V/s. CCE, Kutch 2019(368) ELT 179 (Tri.-Ahmd.)
- CESTAT Ahmedabad Final order No. A/12299/2021 dated 02/04.08.21 in case of M/s. P&B Pharmaceuticals Limited.
- CCE, Ahd-II V/s. Maize Products. 2009(234) ELT 431 (Guj.)
- CCE V/s. Maan Pharmaceuticals Ltd. 2011(263) ELT 661 (Guj.)

3. Shri, Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned order he also expressed no objection if the matter is remanded.

4. On careful consideration of the submission made by both the sides and perusal of record. We find that on the identical issue in the same set of facts only for the different period, this tribunal vide final order No. A-13152/13153-2017 dated 06-10-2017 remanded the matter to the adjudicating authority. The finding of the said order is reproduced below:

"5. I have carefully considered the submissions advanced by bot the sides and perused the records. I find that more or less on similar facts and circumstances, this Tribunal analyzing that provisions of Rule 6(3) of CENVAT Credit Rules, 2004 in the Mercedes Benz's case(supra), observed as follows:

"5.4 We find that the appellant admittedly paid an amount of Rs. 4,06,785/- plus interest, this is not under dispute. Therefore In our view, the appellant have complied with the condition prescribed under Rule 6(3)(II) read with sub-rule (3A) of Rule 6 of Cenvat Credit Rules, therefore demand of huge amount of Rs. 24,71,93,529/- of the total value of the vehicle amounting to. Rs. 494,38,70,577/- sold In the market cannot be demanded. We are also of the view that Rule 6 of the Cenvat Credit Rules Is not enacted to extract Illegal amount from the assessee. The main objective of the Rule 6 Is to ensure that the assessee should not avail the Cenvat Credit in respect of Input or input services which are used in or In relation to the manufacture of the exempted goods or for exempted

services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used In the exempted goods. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that If the assessee does not opt any of the option at a particular time, then option of payment of 5% will automatically be applied. Therefore we do not understand that when the appellant have categorically by way of their Intimation opted for option provided under sub-rule (3)(1), how Revenue can Insist that option (3)(i) under Rule 6 should be followed by the assessee”

4.1 We also find that this issue is no longer res-Integra decided in various Judgments cited (supra). However, since in the appellant’s own matter this tribunal has given specific observation and remanded the matter, this matter also deserves remand. Accordingly we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh de novo adjudication order considering the observation made by this tribunal in the order dated 06-10-2017 (supra).

5. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 03.07.2023)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(C L MAHAR)
MEMBER (TECHNICAL)**