

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12174 of 2014 - DB

(Arising out of OIO-DMN-EXCUS-000-COM-031-13-14 dated 27/02/2014 passed by
Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Macleods Pharmaceuticals Ltd

.....Appellant

Unit-Ii, Plot No. 24 To 28 & 30,
Survey No. 366, Premier Industrial Estate, Kachigam,
Daman, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...AdarshDham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

WITH

Excise Appeal No. 12175 of 2014 – DB

(Arising out of OIO-DMN-EXCUS-000-COM-031-13-14 dated 27/02/2014 passed
Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Vinayak Shirodkar

.....Appellant

Vice President, Macleods Pharmaceuticals Ltd,
Unit-Ii, Plot No. 24 To 28 & 30,
Survey No. 366, Premier Industrial Estate, Kachigam,
Daman, U T Of Dadra & Nagar Haveli

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3rd Floor...AdarshDham Building,
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APPEARANCE:

Ms. Manasi Patil & Shri Viraj Reshamwala, Advocates for the Appellant
Shri Prabhat K Rameshwaram, Additional Commissioner (AR) for the Respondent

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

Final Order No. 11450-11451/2023

DATE OF HEARING: 09.06.2023
DATE OF DECISION: 07.07.2023

RAMESH NAIR

The brief facts of the case is that, the Appellants are engaged in the manufacture of various medicaments falling under Tariff Item No. 3004 90 57 in their factory inter-alia at (Unit-II), Plot No.24 to 28 and 30, Survey No. 366, Premier Industrial Estate, Kachigam, Daman.

1.1 The following medicaments are exempt under Notification No.4/06-CE dated 01.03.2006 at Sr. No. 54.

- (1) Insulin (2) Lamivudine (3) Ritonavir (4) Saquinavir (5) Zidovudine (6)Atazanavir.

1.2 The following medicaments are exempt under Notn.No.4/06-CE dtd.1.3.2006 at Sr. No. 59.

- (1) Streptomycin (2) Isoniazid (3) Thiacetazone (4) Ethambutol (5) Sodium PAS 6) Pyrazinamide (7) Dapsone (8) Clofazamine (9) Tetracycline Hydrochloride (10) Pilocarpine (11)Hydrocortisone (12)Idoxuridine (13)Acetazolamide (14) Atropine (15) Homatropin (16)Chloroquine (17)Amodiaquine (18)Quinine (19)Pyrimethamine (20)Sulfamethopyrezine (21)Diethyl Carbamazine (22) Arteether or formulation of artemisinin.

1.3 The said medicaments, at Sr. No. 54 & 59 of Notification No.4/06-CE are exempt subject to fulfillment of various conditions stipulated therein. The Appellants have cleared the said medicaments at nil rate of duty availing exemption for home clearances. However, when the said medicaments were cleared for export, the same were exported either under Bond/LUT under Notification No.42/01-CE(NT) dated 26.06.2001 issued under Rule 19 of Central Excise Rules, or under the claim for rebate under Notification No. 19/04-CE(NT) dated 6.9.2004 issued under Rule 18 of Central Excise Rule, under a bonafide belief that exemption notification issued under Section 5A was not available for export.

1.4 Wherever goods are exported under Bond/LUT, proofs of export were filed within the period of one year from the date of export. There is no dispute of export of goods either under Bond/LUT or under rebate. There is also no dispute on following the ARE-1 procedure prescribed under export of goods. The acceptance of proof of exports (wherever exports have taken place under Bond/LUT) or, for that matter, sanction of rebate claims through separate Orders-in-Original passed by the sanctioning authority, have not been reviewed or revoked or made inoperative, in the manner known to Central Excise Law. Under the aforesaid factual position, Dept. took a view that exempt goods cannot be exported under Bond/rebate and hence, questioned the act of the Appellants' such export. During the period April 2010 to March 2011, the Appellants had cleared the goods under bond/LUT totally valued at Rs.37,06,36,437/- and also cleared goods for export under claim for rebate totally valued at Rs.12,47,57,697/-.

1.5 Under this factual position, SCN from F.No.V(Ch.30) 15-07/OA/12-13 dated 2.8.2012 (P/74), was issued, proposing to demand and recover an amount of Rs.2,47,69,707/- being 5% of total value of exports under bond/rebate made during the period April 2010 to March 2011 along with interest and penalty and also levy interest on the amount of Rs.32,60,545/- being 5.15% of value of exempted goods paid by Appellants for the period April 2011 and May 2011, based on the allegations that it is not permissible to export under bond or under claim for rebate, those excisable goods which are chargeable to NIL rate of duty or are wholly exempted from payment of duty. Learned Commissioner vide impugned Order-in-Original dated 27.02.2014 has confirmed the demand of Rs. 2,47,69,707/-, appropriated Rs. 25 lakhs paid under protest, ordered interest under section 11AA read with Rule 14, Cenvat Credit Rule, imposed penalty of Rs. 2,47,69,707/- under Rule 15(2), Cenvat Credit Rule read with section 11AC and also imposed separate penalty of Rs. 2,47,69,707/- under Rule 25 of Central Excise Rule Learned Commissioner has also imposed penalty of Rs 5,000 under Rule 15A of Cenvat Credit Rule, 2004 and penalty of Rs 25 lakhs under rule 25 of CER on Shri Vinayak Shirodkar, Vice President of the appellants-company. The Oder-in-Original is based on the findings that since the goods exported were fully and unconditionally exempt from duty neither

input stage rebate is admissible nor such goods could have been exported under Bond/LUT and hence, they were required to pay presumptive tax of 5% of the value of the exempted goods exported under Rule 6(3) of Cenvat Credit Rule. Hence this appeal.

2. Learned Counsel Ms. Manasi Patil with Shri Viraj Reshamwala, Advocates appearing on behalf of the appellant submits that the Appellants were availing exemption under Notification No 4/2006-CE at Sr.Nos. 54 and 59 for clearances of medicaments (i.e. formulations) falling under TI 3004 90 57 that exemption at Sr.No.59 is subject to condition that the formulations should have been manufactured from bulk drugs specified in list 1, while at Sr.No.54 bulk drugs or formulations are subject to the condition that the same should be specified in list 3. that barring provision under Section 5A(1A) of CEA, 1944 would apply only in case of absolute exemption. Rule 6 of CCR, 2004 would not apply to exempt medicaments cleared under Bond/LUT for export under Notification No.42/01-CE(NT) dated 26.06.2001 issued under Rule 19 of CER, 2002 in light of Rule 6(6)(v) of CCR, 2004.

2.1 She further submits that as per Rule 6(6)(v) of Cenvat Credit Rules, 2004 maintenance of separate accounts or reversal of credit is not required once goods are cleared for export under bond in terms of Central Excise Rules, that reversal of Cenvat credit of duty paid inputs pertaining to exempt medicaments would not be required once they are cleared for export under bond. She placed reliance on the following decisions:

(a) Tribunal in the case of Nemilaxmi Books India Pvt. Ltd. [2019-TIOL-694-CESTAT- AHD], has held that once export of goods under bond/LUT is allowed, CENVAT cannot be objected to in view of Rule 6(6)(v) of CCR.

(b) Tribunal in Satyam Paper Products & Polymers Pvt. Ltd. (2016-TIOL 2268-CESTAT-HYD) considering condition (iv) in Notification 43/2001-CE, as amended by Notification no. 24/2001-CE, has held that once export of goods under bond/LUT is allowed, demand is not sustainable.

2.2 She submits that exemption Notification issued under Section 5A is applicable to the goods cleared for home consumption and does not apply to exports, as goods exported are not treated exempted goods, but are at par with dutiable goods. It is her submission that even if duty is paid on exempted goods exported, rebate is admissible based on judgments of Hon'ble Bombay High Court in the following cases:

- (a) Repro India Ltd.-2009 (235) ELT 614 (Bom)
- (b) Sharp Menthol India Ltd.-2011 (270) ELT 212 (Bom)

2.3 She further submits that when the benefit under two or more Notifications is admissible, the Assessee can opt for the one, which is most beneficial to him, in support of which she placed reliance on the following judgments:

- (a) 2001 (130) ELT 405 (SC)-H.C.L. Ltd.
- (b) 1997 (92) ELT 13 (SC) - Indian Petro Chemicals
- (c) 1999 (114) ELT 972 (T)-Asian Paints
- (d) 1999 (109) ELT 393 (T)- Haffkine Bio Pharmaceutical

2.4 She submits that even if duty is paid on exempt goods, rebate is admissible. Goods cleared for export, under Bond or under rebate scheme, cannot be treated as exempt from duty and, hence, credit thereon is admissible. In this regard she placed reliance on the following judgments:

- CCE, Vadodara v. Jayant Oil Mills-2009 (235) ELT 223 (Guj)
- Suncity Alloys Pvt. Ltd. - 2007 (218) ELT 174 (Raj)
- Norris Medicines Ltd.-2003 (56) RLT 353 (T)
- Medispan Ltd.-2004 (178) ELT 848 (T)
- Omkar Textile Mills-2000 (122) ELT 115 (T)-
- SRF Ltd.-2002 (149) ELT 469 (T) -
- Steelco Gujarat -2000 (121) ELT 557 (T)
- JCT Ltd.-1999 (114) ELT 618 (T)
- Alpha Drug India Ltd-2000 (118) ELT 783 (T)
- Hunsur Plywood Works -1996 (82) ELT 256 (T)

2.5 She submits that once the conditions of Rule 18 read with Notification No. 19/2004-CE(NT) are fulfilled and the fact of export on payment of duty is not disputed, disputing the credit availed on inputs used for manufacture of goods exported under claim for rebate, on the ground that, the same goods were cleared for home consumption by availing exemption under Notn.4/2006- CE [Sr. No.54 & 59], is incorrect, especially when there is no such bar for entitlement of rebate under Rule 18, CER., 2002;

2.6 She submits that on export of goods, either of the following benefits is available, with regard to taxes borne on the inputs used for manufacture of such export goods:

- i. refund of cenvat credit of duty paid on inputs attributable to goods exported under Rule 5 of Cenvat Credit Rules, 2004 r/w Notfn.No.5/2006- CE(NT) dated 14.3.2006; or*
- ii. rebate of duty paid on inputs attributable to goods exported under Rule 18 r/w Notfn.No.21/2004-CE(NT) dated 6.9.2004; or*
- iii. Drawback of duty paid on inputs attributable to goods exported under drawback rules.*

2.7 She submits that, in any case, demand covered under SCN dated 02.08.2012 for the period April 2010 to March 2011, is barred by limitation, as extended period of limitation is not invocable, in the absence of any conscious and deliberate suppression or willful mis-statement, etc., as evidenced from the following documents/correspondences with the Dept.:

(a) RG-1 was maintained

(b) Central Excise invoices were issued under Rule 11 CER, 2002 (P/142 to 178) indicating "Export under Form UT-I";

(c) Application for removal of goods for export in Form ARE-1 (P/191 to P/262) were prepared-

- Cross referring tax invoices
- Showing export under Bond
- Signed by Jurisdictional Inspector as well as jurisdictional Superintendent of Central Excise with certification of export under UT-I under Rule 19.

- Mentioned that the goods were manufactured availing Facility of CENVAT credit under CENVAT Credit Rules, 2004.

(d) ER-1s (P/263 to P/300) for each month were filed

(e) Records were audited by EA-2000 audit party (P/301)

(f) There was no conscious or deliberate withholding of any information.

2.8 She submits that every information/details were well within the knowledge of the Dept. and there was no suppression of fact or mis-statement and, hence, invocation of extended period is incorrect and unlawful, based on the following judgments:

- (a) Pushpam Pharmaceuticals - 1995 (78) ELT 401 (SC)
- (b) Cosmic Dye Chemical - 1995 (75) ELT 721 (SC)
- (c) Tamil Nadu Housing Board - 1994 (74) ELT 9 (SC)
- (d) Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)
- (e) Nestle India-2009 (235) ELT 577 (SC)

2.9 She submits in any case, issue involved in the present case is relating to interpretation of provisions and legal interpretation is capable of having more than one interpretation. If an assessee interprets such provisions to his benefit, it cannot be construed as suppression of fact or mis-statement or mala fides on the part of the assessee. In such circumstances, extended period is not invocable, in support of which reliance was placed on following judgments:

- (a) Lanxess ABS Ltd. - 2010 (259) ELT 551 (T)
- (b) Neptune Equipments-2010 (259) ELT 588 (T)

2.10 She submits that once central excise records were audited by Dept., extended period is not invocable based on the following judgments:

- (a) Pragathi Concrete Products-2015 (322) ELT 819 (SC)
- (b) Rajkumar Forge Ltd-2010 (262) ELT 155 (Bom)
- (c) MTR Food-2012 (282) ELT 196 (Kar)

(d) Trans Engineers India Pvt. Ltd. = 2015 (40) STR 490 (T)

-do- Upheld by Bombay High Court-2018-TIOL-133-HC-MUM-CX

2.11 She further submits that, in any case, in Appellants' own case, on the very same issue pertaining to refund, for the period 07/07/2013 and 09/07/2013, Hon'ble CESTAT vide Order No. A/11704/2019 dated 09.08.2019 [2019-TIOL-2868-CESTAT-AHM], has allowed the appeal by sanctioning the refund claim and remanded the matter for the purpose of considering the aspect of unjust enrichment. That Appellants' case pertaining to the refund claim of Rs. 71, 01,440/- for export of exempt medicaments under rebate/bond or LUT, Commissioner (A) vide order dated 27.12.2022 after considering the said order of CESTAT dated 09.08.2019 [2019-TIOL-2868-CESTAT-AHM], has allowed the appeal by way of remand. Personal penalty upon Shri Vinayak Shirodkar, Vice President, is not sustainable as he is working at Head Office, not controlling the activities at factory and also not having any personal gain being a salaried employee. With the above submissions and those made before Lower Authorities, grounds of appeal, the Appellants humbly pray for setting aside the impugned Order-in- Original dated 27.02.2014, with consequential relief.

3. Shri, P. K. Rameshwaram, Learned Additional Commissioner(AR), appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. The issue to be addressed by us in the present appeal is that whether the appellant is liable to pay 5% amount of the value of the goods exported partly under claim for rebate and partly under Bond/LUT in terms of Rule 6(3) of Cenvat Credit Rules, 2004 for the reason that the appellant's export goods are exempted under Notification No. 4/2006 dated 01.03.2006

4.1 The entire case was made out by the revenue is that since the goods exported are exempted under Notification No. 4/2006-CE it is mandatory for the appellant to avail the exemption and either not to pay the duty nor clear the goods under bond for export, on the pretext that the exemption is

unconditional and absolute so appellant was supposed to avail the exemption without any option.

4.2 Firstly, for the ease of reference we reproduce the relevant portion of the Notification No.4/2006–CE and the relevant entry where under the goods of the appellant are under exemption:

“Exemption and effective rate of duty for specified goods of Chapters 25 to 49
In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

<i>S. No.</i>	<i>Chapter or heading or sub-heading or tariff item of the First Schedule</i>	<i>Description of excisable goods</i>	<i>Rate</i>	<i>Condition No</i>
<i>54.</i>	<i>28, 29 or 30</i>	<i>The bulk drugs or formulations specified in List 3</i>	<i>Nil</i>	<i>—</i>
<i>59.</i>	<i>30</i>	<i>Formulations manufactured from the bulk drugs specified in List 1.</i>	<i>Nil</i>	<i>—</i>

		<p><i>Explanation. - For the purposes of this notification, the expression "formulation" means medicaments processed out of or containing one or more bulk drugs, with or without the use of any pharmaceutical aids (such as diluent, disintegrating agents, moistening agent, lubricant, buffering agent, stabiliser or preserver) which are therapeutically inert and do not interfere with therapeutical or prophylactic activity of the drugs, for internal or external use, or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals, but shall not include any substance to which the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) do not apply.</i></p>		
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From the reading of the above notification it can be seen that in both the entry the exemption was granted to not all the goods of the chapter mentioned at column No. 2 of the Table but in case of Sr. No. 54 only to some limited items for which list was appended to the notification, therefore, it cannot be said that the notification is absolute, moreover, in respect to entry Serial No. 59 specific condition is provided as explanation in column No.3 of the table of the notification. Therefore, the notification is not absolute and it is conditional one, therefore it was option for appellant either to avail the exemption under Notification No. 4/2006-CE or not. Accordingly, on this count which is the foundation of the entire case the demand is not sustainable.

4.3 Without prejudice to the above, we find that the demand was raised under Rule 6(3) of Cenvat Credit Rules, 2004. Which is reproduce below:

RULE 6. [Obligation of a manufacturer or producer of final products and a provider of output service]]. —

[(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA 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.

Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.

Explanation 3. - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].

Explanation 4. - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]

[(3) (a) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed;

or

(b) a provider of output service who provides two classes of services, namely :-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely :-

[(i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]

(ii) pay an amount as determined under sub-rule (3A) :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven per cent. of the value so exempted :

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two per cent. of value of the exempted services.

Explanation 1. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all

exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation 2. - *No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.*

Explanation 3. - *For the purposes of this sub-rule and sub-rule (3A),-*

(a) *“non-exempted goods removed” means the final products excluding exempted goods manufactured and cleared upto the place of removal;*

(b) *“exempted goods removed” means the exempted goods manufactured and cleared upto the place of removal;*

(c) *“non-exempted services” means the output services excluding exempted services.]*

[(3A) -----]

[(4) -----]

[(5) -----]

(6) *The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -*

[(i) *cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations; or]*

(ii) *cleared to a hundred per cent. export-oriented undertaking; or*

(iii) *cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or*

(iv) *supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602(E), dated the 28th August, 1995; or*

[(iva) *supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. [12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012]; or]*

(v) *cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or*

(vi) *gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]*

[(vii) *all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —*

(a) *against International Competitive Bidding; or*

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of Notification No. [12/2012-Central Excise, dated the 17th March, 2012];

[(viii) supplies made for setting up of solar power generation projects or facilities.]

*[(ix) * * * * *]*

[(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations.]

[(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported [or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.]

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision :]

[Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub-rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.]

From the above rule it can be seen that the demand of an amount under Rule 6(3) of Cenvat Credit Rules, 2004 shall arise only in case where the input or input service is commonly used in the manufacture of dutiable and exempted goods. As opined by us herein above since appellant have not availed the exemption Notification No. 4/2006-CE question of application of rule 6(3) does not apply. Moreover in respect of the goods cleared under claim for rebate the appellant have admittedly paid the excise duty. Once the excise duty has been paid the demand under rule 6(3) shall not be sustainable.

4.4 Without prejudice we also find that in catena of judgments, it has been held that even though if on any product duty is not payable for any reason but the assessee paid the duty the Cenvat cannot be denied consequently the provision of Rule 6(3) of Cenvat Credit Rules, 2004 will not be applied. Some of the judgments are given below:-

(a) In the case of Drish Shoes Ltd – 2010 (254) ELT 417 (HP), the Hon'ble High Court passed the following judgment:-

“8. It is not in dispute that the respondent is engaged in the manufacture of finished leather and that it had exported manufactured leather as claimed by it. The only question is whether under the CENVAT Credit Rules of 2002 or 2004, it is entitled to the credit/refund of CENVAT paid on inputs, like chemicals etc. purchased by it, to convert raw leather into finished leather.

9. Rule 3 of the CENVAT Credit Rules, 2004, as also Rule 3 of CENVAT Credit Rules, 2002, which have been repealed by the Rules of 2004, provide for credit of CENVAT paid by a manufacture on any inputs or capital goods received in a factory for use in or in relation to the manufacture of final products. Rule 6(1) of the extant Rules as also the repealed Rules, says that CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods. Sub-rule (5) of Rule 6 of the repealed Rules, 2002 and sub-rule (6) of Rule 6 of the extant Rules of 2004 are an exception to Rule 6(1). Sub-rule (5) (vi) of the repealed Rules, provided that sub-rules (1), (2), (3) and (4) shall not be applicable, in case of exempted goods, which are :

“(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) xxxxxx

(v) cleared for export under bond, in terms of provisions of the Central Excise Rules, 2002.”

10. Rule 6(6)(v) of the 2004 Rules provides that the provisions of sub-rules (1), (2), (3) and (4) of Rule 6, shall not be applicable in case the excisable goods removed without payment of duty are :

“(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) xxxxxx

(v) cleared for export under bond in terms of provisions of the Central Excise Rules, 2002.”

11. *The only difference between the Rules of 2002 and 2004 is that while in case of 2002 rules, exception clause contained in sub-rule (5) of Rule 6 was applicable in case of only exempted goods, while exception clause contained in sub-rule (6) of Rule 6 of 2004 rules, applies both to exempted goods, as also goods subject to duty, because the term used in sub-rule (6) is “ excisable goods” and not “exempted goods”, as was the case in Rules of 2002.*

12. *Reference has been made hereinabove to the Rules of 2002, as also 2004, because from the record, it cannot be made out which rules should be applicable. Rules of 2002 were applicable in respect of inputs or capital goods received in the factory after 1st day of March, 2002. They remained in force till the Rules of 2004 came into force. Rules of 2004 are applicable in respect of inputs received by the manufacturer after 10th day of September, 2004. Since finished leather was exported between August, 2004 and March, 2005 and it was not clear as to when the inputs were received, so reference has been made to both the sets of rules. As already noticed, the provisions of both the rules are similar, except that under the Rules of 2002, exception contained in sub-rule (5) of Rule 6 was applicable only to the exempted goods, while under the Rules of 2004, exception applies to all excisable goods, irrespective of the fact whether they are exempted or subject to levy of duty.*

13. *Assistant Commissioner file, rejecting the claim of the respondent, held that since the finished leather exported by the respondent was exempt from duty, no bond or Letter of Undertaking was required to be furnished and the furnishing of bond by the respondent was only a device to claim CENVAT credit under the CENVAT Credit Rules. He took the view that Rule 6(1) clearly stated that CENVAT credit was not permissible in respect of exempted goods.*

14. *The Commissioner (Appeals), while accepting the appeal and reversing the order of Assistant Commissioner, held that Assistant Commissioner had not taken holistic view of the matter and allowed himself to be misled by reading only a few provisions. He held that the object of exception clause contained in Rule 6, as noticed hereinabove, was to promote the export of goods manufactured in India. He observed that in any case, exception clause of Rule 6 allowed the credit/refund of CENVAT paid on inputs in the manufacture of excisable products, exported under a bond.*

15. *The Tribunal has upheld the order of the Commissioner (Appeals).*

16. *The Scheme of CENVAT Credit Rules, 2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows that CENVAT credit/refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading of Rule 3 and sub-rule (1) of Rule 6 of the CENVAT Credit Rules, 2002, as also the Rules of 2004, so as to avoid indirect double taxation on inputs. However, this rule is not absolute. It is subject to exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.*

17. *Sub-rule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in case of dutiable goods. It appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for CENVAT could not be*

claimed in respect of input of those goods, at least under the aforesaid exception clause. To overcome this kind of anomalous situations, exception clause contained in sub-rule (6) of Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.

18. Learned counsel for the appellant argued that term 'excisable goods' used in sub-rule (6) of Rule 6 of 2004 Rules, meant only dutiable goods. Submission has been noticed only to be rejected.

*19. A Division Bench of Bombay High Court in [2009 \(235\) E.L.T. 614](#) (Bom.), *Repro India Ltd. v. Union of India*, while dealing with a similar situation and interpreting the provisions of Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, has held that expression "excisable goods" is wider than the expression "exempted goods", as it includes both dutiable as also exempted goods.*

20. In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No. 1 is answered accordingly.

21. As regards question No. 2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final products which are exempt from duty, can claim refund of CENVAT. So, this question is also answered against the appellant.

22. In view of the aforesaid answers to the questions of law, appeal is dismissed."

(b) In the case of *Repro India Ltd – 2009 (235) ELT 614 (Bom.)*, the Hon'ble Bombay High Court has passed the following judgment:-

"5. The question for consideration is whether in respect of exempted goods for export, the inputs in respect of which are dutiable, can be cleared by giving bond under Rule 19 of the Central Excise Rules, 2002. For the purpose of our discussion some of the relevant Rules of the Central Excise Rules, 2002 to be considered, read as under :-

"19(1) Any excisable goods may be exported without payment of duty from a factory of the producer or manufacturer or the warehouse or any other premises as may be approved by the Commissioner.

19(2).....

19(3). The export under sub-rule (1) or sub-rule (2) shall be subject to the such conditions, safeguards and procedure as may be specified by notification by the Board."

In terms of the aforesaid Rule 19(1) Notification No. 42/2001 has been issued which inter alia stipulates furnishing of a general bond in prescribed form to the Assistant Commissioner having jurisdiction over the factory. Alternatively, the

notification also stipulates that the manufacturer-exporter may furnish a Letter of Undertaking in a prescribed form in lieu of a bond.

5. *The petitioners have produced the relevant portion of Letter F.232/20/01-Central Excise dated 8th November, 2001 of Ministry of Finance which has been extracted in Order-in-Original dated 31st March, 2004 by the Commissioner of Central Excise in the case of Lyka Labs Ltd. which reads as under :-*

“It is deduced that according to CERA since the goods are even otherwise wholly exempted they cannot be exported under Rule 13. In this connection the following would indicate that even exempted goods can be exported in accordance with the provisions of Rule 13.

Rule 13 provides that the Central Government may by Notification in Official Gazette permit export of specified goods subject to safeguards, conditions and limitations. In the notification issued under Rule 13, the Government has specified all excisable goods to be eligible for export under bond in terms of Rule 13. The Notification does not make any distinction between the dutiable and exempted goods nor debars the exempted goods from export under Rule 13. Exempted goods are excisable as having been manufactured and covered under Schedule to CETA 1985 and as such are eligible to be exported under Rule 13.

As per the Board’s Circular No. 471/37/99-CX dated 20-7-99, even the manufacturers of goods attracting nil rate of duty or wholly exempted goods can obtain registration under Rule 174 for the purpose of exporting their goods. Obviously, such manufacturer can, after obtaining registration as permitted vide aforesaid circular, export their goods only under bond in terms of Rule 13 and not in terms of Rule 12 as such goods cannot be exported on payment of duty and rebate claimed under Rule 12.”

Thus the Ministry of Finance vide letter dated 8th November, 2001 has specifically clarified that even the exempted goods can be cleared for export under bond in terms of Rule 13 of the erstwhile Central Excise Rules, 1944, which is pari materia with Rule 19 of the Central Excise Rules, 2002. The Circulars issued by the Central Government are binding on the Central Excise Department. The Madras High Court in Tamil Nadu (Madras State) Handloom Weavers Co-operative Society Ltd. v. Assistant Collector of Central Excise, Erode, [1978 \(2\) E.L.T. \(J57\)](#) has expressly held that the goods figuring in the Schedule to Central Excise Tariff Act for which duty specified is Nil are also excisable goods. This view has been approved by the Supreme Court in Wallace Flour Mills v. CCE, [1989 \(44\) E.L.T. 598](#) (S.C.).

As such though the printed books attract nil rate of duty under Heading 49.01 of the First Schedule to the Central Excise Tariff Act, 1985 they are indeed excisable goods. If they are to be exported, Rule 19(1) read with Rule 19(3) of the Central Excise Rules, 2002 have to be complied with.

6. *As noted earlier the defence of Revenue has been that as the goods otherwise attract nil rate of duty, therefore, no bond or undertaking is required. This overlooks the fact that if the exempted goods are not exported many liabilities are attracted. Firstly, if the assessee has not maintained separate accounts, it will be liable to pay an amount of 10% on the sale price of the goods not exported under Rule 6(3)(b). Similarly, if it has obtained any adjustment or refund in terms of Rule 5 of the Cenvat Credit Rules, 2004 all of them have to be*

repaid if the goods are not exported. Therefore, even if no excise duty as such is required to be paid on the final product which attracts Nil rate of duty, other amounts/sums become payable to the Revenue on account of the failure of the assessee to export. This bond/undertaking is required to be furnished so that the petitioners, undertake to surrender back all the benefits which the assessee has obtained from the Government on the footing that the goods will be exported, but which have not been so exported.

7. We may also consider the provisions of Rule 6 of the Cenvat Credit Rules, 2004. The relevant portion of Rule 6(6)(v) reads as under :-

“(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i).....

(ii)

(iii)

(iv)

(v) cleared for export under bond in terms of provisions of the Central Excise Rules, 2002.”

The petitioners had manufactured both dutiable and exempted final product (packaged software and printed books respectively). The petitioner has taken credit on input used in the manufacture of dutiable as well as exempted final products. If the exempted products are exported outside India the provisions of Rule 6(6)(v) of the Cenvat Credit Rules are applicable. Therefore, the bar provided under Rule 6(1) and the liability created under Rule 6(3)(b) of the Cenvat Credit Rules, 2004 are not attracted. By denying to the petitioner from exporting the printed books under bond what the respondents want to do is in fact to levy 10% on the sale price of the printed books in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004. In our opinion this is wholly impermissible.

The provisions as now contained in Rule 6 of the Credit Rules, 2004 were contained in Rules 57C and 57CC of the Central Excise Rules, 1944 as they stood prior to 1st April, 2000. From 1st April, 2000 till 30th June, 2001 similar provisions were contained in Rule 57AD of the Central Excise Rules, 1944. In the context of these Rules circular dated 8th November, 2001 of the Ministry of Finance was issued. It dealt with the question whether 8% has to be paid on the sale price of exempted goods. Under Rule 6(3)(v) of Cenvat Credit Rules, 2004, to 8% has been increased to 10%. The relevant portion of the Circular dated 8th November, 2001 reads as under :-

“Further, it is now clearly and specifically mentioned in Rule 57AD(4) that the provisions relating to non-availability of Modvat credit and reversal @ 8% is not applicable in case the exempted goods are cleared for export under bond in terms of the provisions of Rule 13 .

In the new rule 57AD, it has been explicitly provided what was implicit in erstwhile rules 57C and 57CC. Further, the present rule 57AD(4) clearly goes on to show that the exempted goods are eligible to be exported under bond. To interpret otherwise will render the new rule 57AD(4) redundant.

In view of the foregoing in this case the provisions of sub-rule 57C(1) are satisfied as stipulated under Rule 57C(2) as well as Rule 57CC(6)1 and there was no need to comply with the provisions of rule 57CC1). Therefore, it is clear that an amount of 8% of the price of the goods exported is not required to be paid irrespective of whether the exported goods are exempted or otherwise.”

It would thus appear that the direction of the respondent No. 2 to the petitioners to pay 10% even though printed books were exported is not legally sustainable. It is only in the event the petitioners does not export the printed goods and do not maintain the account as contemplated by rule 6(2) the petitioner would be required to pay 10% on the sale price of the printed books not so exported.

Even though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 the petitioners are entitled to avail Cenvat credit in respect of the inputs used in the manufacture of the final products being exported irrespective of the fact that the final products are otherwise exempt.

8. The Cenvat credit is allowed n (sic) the duty paid on inputs to mitigate the effect of double taxation of levying duty on inputs as also on the final product. If, however, the exempted final product is exported it calls for a special relaxation/dispensation to make the goods of the country internationally competitive. As an illustration suppose a final product like tractor is otherwise exempted from excise duty even for domestic consumption and such tractors are exported. The various inputs like engines, etc., used in the tractor may have suffered excise duty. The intention is not to export taxes but only to export the goods. If the inputs like engine going into the manufacture of export commodity namely tractors are subject to excise duty, the Indian manufacturer of tractors becomes internationally uncompetitive. This appears to be the object behind the Government enacting special scheme to ensure that the duty is not levied even on inputs going to the export products. Rule 6(6)(v) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied even on inputs going to the export products.

This method of adjustment, both from the point of Government and the assessee is to allow the assessee to take Cenvat credit on the inputs used in the export products and allow the assessee himself to adjust it for payment of duty on other products. If the adjustment is not possible, Cenvat credit is refunded in cash. This appears to be the Scheme of Rule 5 of the Cenvat Credit Rules, 2004. With a view to achieve this object, the Central Government has specifically enacted Rule 6(6)(v) of the Cenvat Credit Rules, 2004 to the effect that the bar created by Rule 6(1) will not apply for goods exported. Considering the conscious and express provisions contained in Rule 6(6)(v) for exported goods, to deny the permission to export under bond and/or to levy 10% on the value of the exported goods under Rule 6(3)(b) on the footing that the printed books exempt and, therefore, attract Rule 6(1) would be incorrect and completely nullify and frustrate Rule 6(6)(v).

9. We may also consider the various clauses of Rule 6(6) which would indicate that they relate to goods which are wholly exempt from duty. Rule 6(6)(i) relates to supply to SEZ. These are wholly exempted from duty vide Notification dated

19th October, 2001 and notification dated 22nd July, 2003. Rule 6(6)(ii) relates to supply of goods to Export Oriented Units. These are wholly exempt by Notification dated 31st March, 2003. Rule 6(6)(iii) relates to goods supplied to a unit located in Electronic Hardware Technology Park or Software Technology Park. Such supplies are exempt from duty by Notification dated 31st March, 2003. Rule 6(6)(iv) relates to supplies to United Nations or an international organisation for their official use. These are exempt by Notification No. 108/95. Rule 6(6)(v) relates to export under bond. Rule 6(6)(vi) relates to gold or silver arising during refining of copper. These are exempt from payment of duty by Notification No. 5/2006-C.E., dated 1st March, 2006. It would thus be clear that all the clauses of Rule 6(6) are enacted only to deal with the situation when the final products are exempt from payment of duty. If a final product is not exempted from duty, Rule 6(1) is not attracted at all and hence Rule 6(6) is unnecessary. Rule 6(6) is precisely needed only when the final products are exempt from payment of duty. In this context the Revenue itself has accepted that under the provisions of Cenvat Credit Rules, 2002 there were provisions for removal of exempted goods under bond but the same was not available with effect from 9th September, 2004 under Cenvat Credit Rules, 2004.

We may reproduce Rule 6(5) of the Cenvat Credit Rules, 2002 which reads as follows :-

“(5) The provisions of sub-rule (1), sub-rule (2), sub-rule (3) and sub-rule(4) shall not be applicable in case the exempted goods are either -

- (i) cleared to a unit in a free trade zone; or
- (ii) cleared to a unit in a special economic zone; or
- (iii) cleared to a hundred per cent export oriented undertaking; or
- (iv) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
- (v) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number GSR 602(E) dated the 28th August, 1995; or
- (vi) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.”

We may reproduce Rule 6(6) of the Cenvat Credit Rules, 2002, which read as under :-

“The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

- (i) cleared to a unit in a special economic zone; or
- (ii) cleared to a hundred per cent export oriented undertaking; or
- (iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995 number G.S.R. 602(E) dated the 28th August, 1995; or

(v) cleared for export under the items of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.”

A perusal of the aforesaid Rules would clearly show that sub-rule (i) to (vi) are identical and the difference in Rule 6(6) of the Cenvat Credit Rules, 2004 and Rule 6(5) of the Cenvat Credit Rules, 2002 is not relevant for the purpose of the present case. Rule 6(1), 6(2), 6(3) and 6(4) of the Cenvat Credit Rules under Cenvat Credit Rules, 2002 as well as under the Cenvat Credit Rules, 2004 remains the same. As noted earlier the object and purpose of Rule 6(6) of Cenvat Credit Rules, 2004 is to promote the policy of the Government that the benefit of duty paid on input is available as credit in respect of certain exempted goods as well as the exempted goods exported under bond. The minor change in the wordings of Rule 6(6) of the Cenvat Credit Rules, 2004 by using the term “excisable goods” instead of exempted goods is that the term ‘exempted goods’ may not cover the dutiable goods which are exported under bond. Therefore, in order to widen and cover both dutiable and exempted goods exported under bond, Rule 6(6) of Cenvat Credit Rules, 2004 uses the expression “excisable goods”. As an illustration, if a car which is dutiable is exported under bond without payment of duty there may be doubt as to whether credit on the inputs will be available, since the car is cleared without payment of duty under Rule 6(5) of Cenvat Credit Rules, 2002. It could be argued that it covers only the exempted goods exported and not dutiable goods exported. In order to cover such a situation also, Rule 6(6) of Cenvat Credit Rules, 2004 used the expression ‘excisable goods’ which is wider to include both dutiable as well as exempted goods.

10. In our opinion therefore, the petition will have to be allowed. The Petitioners are entitled to remove the goods on furnishing the bond as set out in Annexure 16 in Form B-1 of the Central Excise Manual. Rule made absolute accordingly. There shall be no order as to costs.”

4.5 As regards the goods cleared for export under bond it is undisputed that the appellant have consciously cleared the goods under Bond/ LUT. The LUT has been accepted by the department officers, the export consignments have been assessed accepting the clearances under Bond/LUT. In such case in terms of Rule 6(6)(v) of Cenvat Credit Rules, 2004 the provision of sub Rules (1),(2),(3) and (4) shall not be applicable in cases the goods removed without payment of duty, therefore in case of goods cleared under Bond/LUT also the demand under Rule 6(3) of Cenvat Credit Rules, 2004 will not sustain. The contention of the revenue is that during the relevant time under

the Notification No. 42/2001-CE(NT) dated 26.06.2001 there was condition (1) (iv) of the notification, the same is reproduced below:-

“(iv) that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export-oriented undertaking, shall not be allowed under this notification;)”

4.6 The revenue has interpreted that as per the above condition the appellant was not supposed to clear the goods under Notification No 42/2001-CE(NT) dated 26.02.2001 therefore the clearance of goods cannot be treated as export under bond and consequently the benefit of Rule 6(6)(v) is not available to the appellant. We find that even though there is a condition in Notification No. 42/2001-CE(NT) but the fact in this case is the appellant have cleared the goods under LUT which was accepted by the revenue at the time of export therefore the clearance is clearly covered under Rule 6(6)(v) of Cenvat Credit Rules, 2004. If at all there is any violation it is violation of condition (1)(iv) of Notification No. 42/2001-CE(NT), however the revenue has not made out the case for violation of condition 42/2001-CE(NT). In this case at the most the case should have been framed for violation of condition of the Notification No. 42/2001-CE(NT) but due to violation of the such condition the benefit of Rule 6(6)(v) of Cenvat Credit Rules, 2004 cannot be disallowed by the revenue for the simple reason that such parallel provision was neither made nor any such rider is provided with condition (1)(iv) of Notification No. 42/2001-CE(NT), even there is no mentioned in Rule 6(6)(v) of Cenvat Credit Rules, 2004 that such clearance should be strictly made under Notification No.42/2001-CE(NT). In this position the allegation of revenue for demand of an amount under Rule 6(3) Cenvat Credit Rules, 2004 cannot be sustained.

4.7 This issue has been considered in various judgments where under it was categorically held that even though exempted goods is cleared without payment of duty, the Cenvat Credit of the inputs used in such export goods cannot be denied. Some of the judgments are cited below:-

(a) 2000 (122) ELT 115 (T) - Omkar Textile Mills

(b) 2002 (149) ELT 469 (T) - SRF Ltd.

- (c) 2000 (121) ELT 557 (T) - Steelco Gujarat
- (d) 1999 (114) ELT 618 (T) - JCT Ltd.
- (e) 2000 (118) ELT 783 (T) - Alpha Drug India Ltd.
- (f) 1996 (82) ELT 256 (T) – Hunsur Plywood Works

4.8 Without prejudice to the above findings, we further find that in any case Cenvat credit cannot be denied on the inputs in case the finished goods wherein such inputs were used, exported out of country. Various mechanisms were provided for giving relief of input duty such as drawback, procurement of input without payment of duty under Notification No. 43/2001-CE(NT), rebate of duty of inputs, in terms of Rule 18 of Central Excise Rule 2012, refund of Cenvat of input used in export goods in terms of Rule 5 of Cenvat Credit Rules. Under all this scheme government has ensured that the input used in the manufacture of export goods should not suffer duty or if at all any duty is paid the same should be refunded. In other words, in the overall policy for export of goods, neither the duty on inputs nor the duty of finished goods should be exported. With these objective if the demand under Rule 6(3) is made, all these schemes which is with the objective that no duty should be charged on input will be defeated. For this reason also the duty paid on the inputs which is used in export goods cannot be demanded under Rule 6(3) of Cenvat Credit Rules, 2004. As the whole exercise is revenue neutral, for this reason also the demand under Rule 6(3) is not sustainable. As per our above discussion the demand under Rule 6(3) is not sustainable on various counts.

4.9 Without prejudice we also find that the appellant have contested strongly the demand on time bar. In this regard we find that the show cause notice dated 02-08-2012 was issued for the period April-2010 to March-2011. Accordingly, the extended period of limitation was invoked. As per the undisputed fact the appellant was registered and were maintaining all the records such as RG-1 Central Excise invoices were issued under Rule 11 of Central Excise Rule, 2002 indicating export under form UT-1.

4.10 At the time of export, the appellant have been filing application for removal of goods for export in form ARE-1 wherein the tax invoice showing

exports under bond was made and the said ARE-1 were signed by Jurisdictional Central Excise authority as well as superintendent of Central Excise with certification of export under LUT-1 under Rule 19. It was also mentioned that all the ARE-1s that the goods were manufactured following facility of Cenvat Credit under Cenvat Credit Rules, 2004 the appellant had filed all the AREs for each month to the department. The appellant's records were audited by Audit party. In this fact, there is absolutely no suppression of facts on the part of the appellant. Accordingly the demand for extended period is clearly hit by limitation. The appellant have relied upon the following judgments in support of the demand with regard to limitation:-

- (a) Pushpam Pharmaceuticals - 1995 (78) ELT 401 (SC)
- (b) Cosmic Dye Chemical - 1995 (75) ELT 721 (SC)
- (c) Tamil Nadu Housing Board - 1994 (74) ELT 9 (SC)
- (d) Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)
- (e) Nestle India - 2009 (235) ELT 577 (SC) (e)

4.11 As regard the appeal of Shri Vinayak Shirodkar, in the impugned order a penalty of Rs 5,000/- under Rule 15A of Cenvat Credit Rules, 2004 was imposed. This penalty was imposed consequent to the confirmation of demand against the appellant company. As per our above discussion since the demand of amount itself is not sustainable, personal penalty imposed on Shri Vinayak Shirodkar will also not sustain. Accordingly, the penalty is set aside.

5. As per our above discussion and findings, the demand under Rule 6(3) of Cenvat Credit Rules, 2004 in the impugned order is not sustainable on merit as well as on limitation. Hence, we set aside the impugned order and allow the appeals.

(Pronounced in the open court on 07.07.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)