

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 13373 of 2014- DB

(Arising out of OIO-VAD-EXCUS-001-COM-10-11-14-15 dated 21/08/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Zenith Fibers Ltd

.....Appellant

Block No. 458,
P.O. : Tundav,
Taluka : Savli,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:

Shri, Abhay Y. Desai, Advocate appeared for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. 11644/2023

DATE OF HEARING: 10.07.2023
DATE OF DECISION: 02.08.2023

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of Polypropylene Staple Fiber and Polypropylene Spun Yarn falling under Central Excise Tariff Heading No. 5509 4210. They have cleared the said goods during the period of 01.04.2010 to 31.02.2011 by availing exemption Notification No. 30/2004-CE dated 09-07-2004 (Sr. No. 9). The appellant though availed the Cenvat Credit on the common inputs however at the time of clearance of the goods they have reversed 5% of the value of the goods in terms of Rule 6(3)(i) of Cenvat Credit Rules 2004. The case of the department is that since the appellant had availed Cenvat Credit even though they reversed 5% they have violated the condition of Notification No.

30/04-CE which prescribes for availing the said exemption no Cenvat Credit should be availed on inputs. Accordingly, by denying the exemption Notification No. 30/04-CE, the demand was confirmed for the period prior to the 01.04.2011.

2. Shri Abhay Desai, Learned Counsel, appearing on behalf of the appellant submits that as per the condition of Notification No. 30/2004-CE the appellant should not have availed the Cenvat Credit in terms of Cenvat Credit Rules, 2004. He submits that the reversal of 5% in terms of 6(3)(i) of Cenvat Credit Rules, 2004 is also a mechanism of non-avilment of Cenvat Credit therefore, by reversing of 5% the situation is as if no Cenvat Credit was availed. Therefore, the condition of the notification stands complied with. Accordingly, demand is not sustainable.

2.1 He submits that on the identical facts this Tribunal has considered this issue in the following decisions:

- Spentax Industries Ltd Vs. Commissioner of Central Excise & Service Tax, Indore 2016 (338) E.L.T. 614 (Tri.-Del.)
- Life long Appliances Ltd.Vs. Commissioner of Central Excise, Delhi-III 2000 (123) E.L.T. 1110 (Tri.-Del)
- Sita Singh & Sons Pvt. Ltd Vs. Commissioner of Central Excise, Delhi-IV 2015 (327) E.L.T. 281 (Tri.-Del)

3. Shri Ajay Kumar Samota, Learned Superintendent (AR), appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration submission made by both the sides and perusal of record, we find that the benefit of exemption Notification No.

30/14-CE was denied, on the ground that the appellant have availed the Cenvat Credit on receipt of the common inputs. However, the facts is not under dispute that the appellant though availed the Cenvat Credit initially but at the time of clearance of goods under Notification No. 30/14-CE they reversed 5% in terms of Rule 6 (3)(i) of Cenvat Credit Rules, 2004. It is observed that in Rule 6, sub-Rule (3D) was included under explanation with effect from 01.04.2011 which reads as under:

“(3D) 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.

4.1 Payment of an amount of 5% in terms of sub-rule (3D) shall be deemed to be Cenvat Credit not taken for the purpose of an exemption Notification where in any exemption is granted on the condition that no Cenvat Credit of inputs and input services shall be taken. In terms of the above sub-rule (3D) in an exemption, if there is a condition of non-availment of Cenvat Credit but even if the Cenvat Credit is availed on the common input and input services by reversing the credit as per the Rule 6(3) the condition of the Notification shall stand complied with. Even though the aforesaid Sub Rule was inserted with effect from 01.04.2011, the said sub rule is in the nature of clarificatory and shall have retrospective effect. Moreover, the reversal of 5% of the value of exempted goods in terms of 6(3)(i) of Cenvat Credit Rules, 2004 is one of the mechanisms to expunge the Cenvat Credit availed by the assessee therefore even after taking the credit if the assessee reverse an amount, as provided in Rule 6(3) it will amount to non availment of Cenvat Credit.

4.2 This issue has been considered by this Tribunal in the case of Spentex Industries Ltd (Supra) wherein even for the period before the insertion of Rule 6(3D) of Cenvat Credit Rules, 2004, it was held that when the assessee reverse 6% of the value of the exempted goods in terms of Rule 6(3)(i) the condition of the Notification No. 30/04-CE stands complied with and demand shall not be sustainable. The relevant order is reproduced below:

“This appeal is against the order dated 21-1-2014 of Commissioner of Central Excise, Indore. The brief facts of the case are that the appellants are engaged in the manufacture of cotton and synthetic yarn liable to Central Excise duty. They are availing Cenvat credit on inputs, input services and capital goods in terms of Cenvat Credit Rules, 2004. They are clearing a part of the finished goods without payment of duty in terms of Notification No. 30/2004-C.E., dated 9-7-2004. In respect of this exempted goods, the appellants are paying an amount equal to 6% of the value in terms of Rule 6(3)(i) of the said Rules. Notification No. 30/2004-C.E., dated 9-7-2004 stipulates that nothing contained in the said notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of Cenvat Credit Rules, 2004. The Revenue is of the view that as the appellant have availed credit on all inputs (used for duty paid as well as exempted final products) they are barred from availing the above-mentioned notification. The appellant’s contention is that payment of 6% of value of exempted goods will make them entitled for above said exemption. For this, they rely on sub-rule (3D) of Rule 6 of Cenvat Credit Rules, 2004, which states as under:

Payment of an amount under sub-rule (3) shall be deemed to “(3D) 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.”

2.*The Id. Counsel for the appellant submitted that exemption availing under the above-mentioned notification has been rightly claimed by the appellants. The findings of the original authority based on the explanation (3) of Rule 3 is misconceived. The deeming provision under Rule 6(3D) covers the present situation. Even without this sub-rule when the assessee follows the procedure under Rule 6(3)(i) they are entitled for exemption. He relied on the decision of the Tribunal in Life Long Appliances Ltd. - [2000 \(123\) E.L.T. 1110](#) (Tri. - Del.) and in Sita Singh & Sons (P) Ltd. - [2015 \(327\) E.L.T. 281](#) (Tri. -Del.).*

3.The Id. AR reiterated the findings of the original authority.

4.We have heard both the sides and examined the records.

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."

4.3 In the identical issue another Bench on this Tribunal in the case Sita Singh & Son's Pvt. Ltd (Supra) passed the following order:

" As per the facts on records, the appellant is engaged in the manufacture of motor vehicles. They are fabricating bodies on duty paid chassis. In terms of Notification No. 3/2001, dated 1-3-2001 subsequently followed by Notification No. 6/2002, they were entitled to the benefit of exemption subject to the condition they do not avail credit of duty paid on chassis and also various other inputs. The appellant was availing credit in respect of inputs and were clearing their final product on payment of duty. However, some of the goods were manufactured by them were cleared in terms of said notification.

2. As they were maintaining a common account for the purpose of credit of duty availed on the inputs which were used in the manufacture of duty paid clearances also in respect of exempted clearances, the appellant reversed an amount of 8% of value of exempted goods, in terms of provisions of Rule 6(3)(d).

3. The Revenue entertained a view that as the appellant had availed credit on common inputs which have been used in the manufacture of duty paid clearances as also exempted clearances and payment of 8% in terms of Rule 6(3)(d) is not sufficient, the conditions of Notification are violated. As such, the appellants are not entitled to the benefit of exemption notification. Accordingly the proceedings were initiated against them. The appellants during the course of adjudication, calculated the total credit availed by them in respect of inputs used in the manufacture of exempted final products. After taking into account the payment already made in terms of Rule 6, they debited the credit so availed by them to the extent of Rs. 11,61,409/-. The said fact is recorded in the impugned order of the Commissioner (Appeals).

4. Short issue required to be decided is as to whether such reversal of credit, either by payment of 8% in terms of Rule 6 or by debiting the same from the Cenvat credit account, would result to satisfying the condition of notification in question. The condition of the notification is that no credit should have been availed in respect of inputs used in the manufacture of such goods. We find that the issue is no more *res integra* and stands settled by Hon'ble Supreme Court in the case of *Chandrapur Magnet Wires Ltd. v. C.C.E.* - [1996 \(81\) E.L.T. 3](#) (S.C.). It stands held that when credit so availed is subsequently reversed, the situation would be as if no credit was ever availed. Reference is made to the following decisions :

- (1) *Asha Rubber P. Ltd. v. CCE, Ahmedabad-II* - [2009 \(233\) E.L.T. 120](#) (Tri.-Ahmd.)
- (2) *Lifelong Appliances Ltd. v. CCE, Delhi-III* - [2000 \(123\) E.L.T. 1110](#) (Tri.-Del.)
- (3) *CCE, Delhi-IV v. M/s. Escorts Ltd.* - 2010-TIOL-378-P&H-CX = [2015 \(322\) E.L.T. 325](#) (P & H)
- (4) *Escorts Ltd. v. CCE, Delhi-IV* - [2004 \(176\) E.L.T. 817](#) (Tri.-Del.)
- (5) *Steelco Gujarat v. CCE, Vadodara* - [2000 \(122\) E.L.T. 381](#) (Tri.-Mumbai)
- (6) *Mardia Chemicals Ltd. v. CCE, Rajkot* - [2006 \(199\) E.L.T. 110](#) (Tri.-Mumbai)
- (7) *CCE, Nagpur v. Ballarpur Industries Ltd.* - [2007 \(215\) E.L.T. 489](#) (S.C.)
- (8) *Godrej Industries Ltd. v. CCE, Mumbai* - [2008 \(229\) E.L.T. 484](#) (S.C.)
- (9) *Refnol Resins & Chemicals Ltd. v. Union of India* - [2013 \(287\) E.L.T. 61](#) (Guj.).

5. The ratio of law declared by the above decisions to the effect that the credit initially taken if reversed subsequently is required to be considered as if no credit was ever taken and amounts to satisfying the condition of notification which are to the effect that no credit should be availed on inputs. We also note that Hon'ble Gujarat High Court's decision in the case *CCE v. Ashima Dyecot Ltd.* - [2008 \(232\) E.L.T. 580](#)

(Guj.) = [2008 \(12\) S.T.R. 701](#) (Guj.) where the provisions of explanation to Rule 3, which also stands relied upon by the lower authorities in the present case, were taken note of it was held that reversal would amount no credit situation. Inasmuch as the appellant has reversed the entire credit, either by way of payment of 8% or by debiting the same in Cenvat credit account, we hold that the condition of notification is satisfied.

6. At this stage, Id. DR submits that the fact that whether the entire proportionate credit was reversed by the appellant that is required to be verified. We accordingly direct the original adjudicating authority to examine whether Cenvat credit reversed by the appellant is in respect of inputs used in the manufacture of final exempted goods or not. Inasmuch as the matter is being remanded for verification of above fact, the original adjudicating authority would also decide the issue of interest liability on the credit so availed and subsequently reversed in accordance with law.

7. As regard penalty, we agree with Id. Advocate that when exemption has been held to be admissible to the appellant no penalty is required to be imposed.

8. The appeal is disposed of in the above terms."

4.4 As per the above decision and the discussion made by us herein above, it is clear that the appellant by reversing 5% of the value of exempted goods in terms of Rule 6(3)(i) fulfilled the condition of Notification No. 30/2004-CE. Therefore, the appellant are legally entitle for exemption Notification No. 30/2004-CE, and the demand is not sustainable.

5. As a result the impugned order is set aside appeal is allowed.

(Pronounced in the open court on 02.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)