CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 12192 of 2016-DB

[Arising Out Of OIO-VAD-EXCUS-001-COM-036-16-17 Dated 26/09/2016 Passed By Principle Commissioner Customs, Excise And Service Tax-VADODARA-I]

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

VERSUS

Shreno Limited **...Respondent**
Glass Division, Alembic Road,
Gorwa,
Vadodara,
Gujarat

APPEARANCE:
Shri Rajesh Nathan, Assistant Commissioner (Authorized Representative) for the Appellant
Shri Saurabh Dixit, Advocate for the Respondent

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

FINAL ORDER NO.A / 12345 /2023

DATE OF HEARING: 18.10.2023
DATE OF DECISION:20.10.2023

RAMESH NAIR

The issue involved in the present case is that whether the respondent is liable to pay 10%/8%/6% on the value of exempted Steam cleared from the factory under Rule 6(3) of CENVAT Credit Rules, 2004, when the respondent has reversed the proportionate CENVAT Credit on the common input service attributed to such exempted Steam.

2. Shri Rajesh Nathan, learned Assistant Commissioner (Authorized Representative) appearing on behalf of the revenue appellant reiterates the

grounds of appeal. He submits that in terms of the Hon'ble Bombay High Court judgment in the case of CCE., Thane Vs. Nicholas Piramal (India) Ltd- 2009 244 ELT 321 (Bom.) It was held that in case an assessee has taken the credit on the common input service there is no option except to pay 10%/8%/6%, in terms of Rule 6(3) of CENVAT Credit Rules, 2004. Therefore, the order passed by the original Adjudicating Authority is not legal and proper, and the same deserves to be set aside and revenue's appeal be allowed.

3. Shri Saurabh Dixit, learned Counsel appearing on behalf of the respondent reiterates the findings of the impugned order. He further submits that the issue is no longer *res integra,* as held in following judgments:

3.1 He submits that there is no dispute that the appellant respondent had reversed the proportionate credit attributed to the exempted steam cleared from the factory of the appellant. Therefore, in such case, demand of 10%/8%/6% under Rule 6(3) is not sustainable. As regard the decision cited by the learned AR on CCE., Thane Vs. Nicholas Piramal (India) Ltd, he submits that this judgments has been time and again considered and distinguished in various judgments by this Tribunal and even various High Courts also taken view that once the proportionate credit is reversed no demand under Rule 6(3) will be sustainable. He also placed reliance on this Tribunal's recent decision, vide Final Order No. A/12244/2023 dated 10.10.2023, in the case of M/s. Checkmate Services Pvt Ltd.

4. On careful consideration of the submissions made by both the sides and perusal of record. We find that there is no dispute on the fact that the respondent had reversed the CENVAT Credit on the common input service attributed to the exempted steam cleared by the respondent form their factory. Therefore, in view of the judgments cited by the learned Counsel, the

demand under Rule 6(3) is not sustainable. In view of the said judgments, the issue is no longer *res integra.* Therefore, in the present case also, we observed that the learned Adjudicating Authority has rightly dropped the demand raised under Rule 6(3) of CENVAT Credit Rules 2004, and we do not find any infirmity in such order. Hence, the same is maintainable.

5. Accordingly, we uphold the order-in-original. The revenue's appeal is dismissed.

(Pronounced in the open Court on 20.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK