

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10697 of 2014- DB

(Arising out of OIO-AHM-EXCUS-002-COMMR-043-13-14 dated 26/11/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Intas Pharmaceuticals Limited

Plot No. 191/457/458, Matoda, Patia,
Nh 8a, Village : Matoda, Taluka : Sanand,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

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

.....Respondent

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant

Shri P. Ganesan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12387 /2023

DATE OF HEARING: 24.07.2023

DATE OF DECISION: 31.10.2023

RAMESH NAIR

The briefs facts of the case are that the appellant are engaged in the manufacture of dutiable as well as exempted medicaments. They are availing cenvat credit and hence they have opted for following the scheme envisaged under Rule 6 (3A) of the cenvat credit rules, 2004. In the financial year 2011-12, the appellant reversed the cenvat credit on monthly basis proportionately under Rule 6(3A) at the end of the financial year 2011-12. This proportionate reversal worked out to Rs. 1, 93, 98,476/- on provisional basis. However , on determination of final amount of reversal of cenvat credit, the appellant found that actual amount that was reversible was only Rs. 91,41,144/- and thus the appellant were eligible to claim re-credit of Rs. 1, 02, 57,602/-, since the provisional reversal during the financial year 2011-12 was in excess by that amount.

1.2 Pursuant to the audit of the records, a show cause notice came to be issued alleging that the appellant had failed to follow the prescribed condition of Rule 6 (3A) for reversal of credit by not including the credit amounting to Rs. 1,58,66,384/- which pertains to the input credit on the services mentioned in Rule 6 (5) in the year 2011-2012, since Rule 6(5) was omitted w.e.f 01.04.2011. The show cause notice also alleged that further the sum of cenvat credit amount of Rs. 3,52,69,062/- was wrongly availed in the month of October, 2012 and December, 2012 whereas the credit pertained to the financial year 2011-12. On the aforesaid contention, the show cause notice proposed to demand amount of Rs. 1,63,41,548/-, a short paid/ reversed credit due to non-inclusion of the amount of Rs. 1,58,66,384/- and Rs. 3,52,69,062/- at the time of quantification of the amount to be reversed for the period 2011-12. The adjudicating authority held that though the credit was availed in the month of October & December, 2012, the credit pertained to the financial year 2011-2012 and so the appellant is lawfully eligible for its exclusion. However, he confirmed the demand of inclusion of input service credit amounting to Rs. 1,58,66,384/- pertaining to services covered by Rule 6 (5) of the Cenvat Credit Rules, 2004 availed in the year 2011-12, on the ground that the services for the said amount were availed in the year 2011-12 and the credit was also taken in the same year. Thus, the Learned Commissioner upheld the impugned order and required the appellant to pay 51,74,729/- as cenvat credit short paid/reversed, since the amount of Rs. 1,58,66,384/- was not included by the Appellant at the time of quantification of the amount to be reversed as per Rule 6(3A). Further, the learned Commissioner also confirmed levy of interest and imposed penalty of Rs. 13, 00,000/- under Rule 15 of the Cenvat Credit Rules, 2004. Therefore, the present appeal filed by the appellant.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the Appellant submits that all the services specified in Rule 6 (5) for which cenvat credit of Rs. 1,58,66,384/- was availed in the year 2011-12 were received prior to the omission of Rule 6 (5) i.e. prior to 01.04.2011. He submits that it is evident from the excel sheet placed in the appeal papers from page 71 to 349 that all the services received prior to 01.04.2011 and all the invoices are dated prior to 01.04.2011. Thus, it stands proved that the said services were received prior to 01.04.2011 when Rule 6 (5) was in existence. Thus, the learned Commissioner has mechanically confirmed the demand of inclusion of cenvat credit amount to Rs. 1,58,66,384/-. He submits that it is a settled law that the eligibility of cenvat credit with respect to any service received shall be governed by the law existing at the time of receipt of the services. In this context he placed reliance on the following judgments:-

- Spenta International Ltd – 2007 (216) ELT 133 (Tri.LB)
- Grasim Industries Ltd – 2004 (176) ELT 265 (T), 2005 (179) ELT A38 (SC)
- HEG Ltd vs. CCE – 1998 (100) ELT 133 (T)
- Essel Propack Ltd – 2022 (379) ELT 123 (T)
- Warburg Pincus India Pvt Ltd – 2022 (11) TMI 1006 – CESTAT

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue to be decided is that whether the eligibility of the cenvat credit should be considered as on the date of receipt of the service or on taking the credit in the books. As per the judgments cited by the appellant it is a settled law that the eligibility of the cenvat credit has to be considered as on the date of receipt of the services for the reason that the moment appellant received the service

along with invoices on that date the cenvat credit stand accrued to the appellant.

4.1 As per the excel sheet submitted by the appellant in respect of all the invoices related to the credit of Rs. 1,58,66,384/-, it is observed that all the invoices are pertaining to the period prior to 01.04.2011. As we opined that the eligibility of the credit to be considered as on date of receipt of service but in the present case the Adjudicating Authority has not examined the actual date of receipt of service. Therefore, for this limited purpose matter needs to be remanded back to the Adjudicating Authority.

4.2 We do not agree with the Adjudicating Authority that only for the reason that the credit was availed after 01.04.2011 when Rule 6(5) was omitted, the appellant are not eligible for cenvat credit on 16 services as prescribed in the said Rule. Even though the Rule 6 (5) was omitted from 01.04.2011, if it is proved that services were received prior to 01.04.2011, the credit taken after 01.04.2011 shall be admissible to the appellant.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 31.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L MAHAR
MEMBER (TECHNICAL)

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