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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11023 of 2017

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-70-16-17 dated 15/02/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Tata Chemicals Ltd. **......Appellant**
MITHAPUR, DEVBHOOMI,
DWARKA, GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot **.........Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

WITH

Excise Appeal No.12446 of 2019

(Arising out of OIO-RAJ-EXCUS-000-COM-02-19-20 dated 24/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Tata Chemicals Ltd. **......Appellant**
MITHAPUR, DEVBHOOMI,
DWARKA, GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot **.........Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

AND

Excise Appeal No.10699 of 2020

(Arising out of OIO-RAJ-EXCUS-000-COM-02-20-21 dated 15/07/2020 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Tata Chemicals Ltd. **......Appellant**
MITHAPUR, DEVBHOOMI,
DWARKA, GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot **.........Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Shri. Gajendra Jain, Advocate for the Appellant
Shri Ghanshyam Soni, Jt. Commissioner (AR) for the Respondent

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

Final Order No. A/ 12510-12511,12521 /2021

DATE OF HEARING: 04.10.2021
DATE OF DECISION: 16.11.2021

RAJU

Following appeals have been filed M/s Tata Chemicals Ltd. against demand of reversal of cenvat credit, interest and imposition of penalties.

Sl. No.	Appeal Nos	Period involved	Amount involved
1.	E/11023/2017	April 2008 to September 2008	Rs. 12,27,10,374/-
2.	E/12446/2019	April 2014 to March 2016	Rs. 11,54,65,331/-
3.	E/10699/2020	April 2016 to June 2017	Rs. 8,54,04,264/-

2. Learned Counsel for the appellant pointed out that the appellant is engaged in the manufacture of soda ash and salt at their factory located at Mithapur. Soda ash was a dutiable product whereas salt was exempted from Central Excise duty under the First Schedule to the Central Excise Tariff Act, 1985. During the relevant period, the Appellants were availing the benefit of Cenvat credit on inputs, input services and capital goods used in the manufacture of dutiable goods. The Appellants have a captive power plant (CPP) in their factory for generation of electricity, which in turn is used in the manufacture of finished goods. The Appellants used pet coke and furnace oil as fuel for the generation of electricity in the CPP. The pet coke and furnace oil are first used for generation of steam, which is further used for generation of electricity. A part of the steam generated is also used directly in the manufacture of soda ash. A part of the electricity generated from steam in the CPP is used by the Appellants in the soda ash plant and some part of the electricity is also supplied by the Appellants to the salt plant and residential colony.

2.1 Prior to 16.05.2005, the Appellants availed CENVAT/MODVAT credit of duty paid on entire amount of furnace oil and pet coke used in the generation of electricity at the captive power plant. Appellants were availing CENVAT credit on purchase of furnace oil and pet coke, used as fuel for generation of electricity, which in turn was utilized in manufacture of both dutiable goods (soda ash) and exempted goods (salt). No separate records were maintained and no CENVAT credit was reversed prior to 16.05.2005 in view of exception made for inputs used as fuel under sub-rule (2) of Rule 6 of CENVAT Credit Rules, 2004. Show Cause Notice No. V.JMR/AR-Dwarka/ADC/019/2006 dated 09.03.2006 issued to the Appellants, proposing to deny and recover CENVAT credit of Rs.20,30,378/- for the period 01.10.2001 to 15.05.2005, being proportionate CENVAT credit availed on inputs used as fuel for generation of electricity supplied for manufacture of exempted goods. The demand of Rs.20,30,378/- proposed in show cause notice dated 09.03.2006 for the period 01.10.2005 to 15.05.2005, was confirmed by the Ld. Additional Commissioner of Central Excise, Rajkot vide Order-in-Original No. 25/ADC/2006 dated 27.09.2006. Commissioner (Appeals) of Central Excise, Rajkot vide Order-in-Appeal No.99/2007/COMMR(A)/RAJ dated 03.05.2007, allowed the appeal filed by the Appellants against the above Order-in-Original dated 27.09.2006 and set aside the demand of Rs.20,30,378/- raised for the period 01.10.2005 to 15.05.2005 on the ground that during the relevant period there was an exception under Rule 6(2) for inputs used as fuel, from the obligations of Rule 6 of the CENVAT Credit Rules, 2004.

2.2 Learned Counsel submitted that Rule 6 of CENVAT Credit Rules, 2004 was amended by Notification No. 27/2005-C.E.(N.T.) dated 16.05.2005 and the exception granted to inputs used as fuel under sub-rule (2) of Rule 6 of CENVAT Credit Rules, 2004, was omitted. From 16.05.2005 onwards, the Appellants started availing only proportionate CENVAT credit of the duty paid on furnace oil and pet coke i.e., to the extent electricity generated was supplied to the soda ash plant for manufacture of dutiable goods. In respect of the electricity that was supplied to the salt plant and residential colony, CENVAT credit was reversed by the Appellants on the proportionate quantity of furnace oil and pet coke. The proportionate CENVAT credit was reversed before filing of the ER-1 returns for each month and the reversal was duly indicated in the monthly ER-1 returns. The said practice has been followed by the Appellants till 30.06.2017, till the introduction of the GST regime. In respect of the electricity supplied to salt plant (exempted goods) and residential colony, the CENVAT credit attributable to such quantity of furnace oil and pet coke was reversed at the beginning of the month itself and such reversal was duly indicated in monthly ER-1 returns. Another Show Cause Notice No. V.JMR/AR-Dwarka/COMMR/SCN-49/2006 dated 19.05.2006 was issued to the Appellants, proposing a total demand of Rs.25,34,77,735/-, bifurcated as follows:

(i) Demand of Rs.22,41,76,788/- for the period 16.05.2005 to 15.05.2006, being 10% of the value of vacuum salt and iodized vacuum salt under Rule 6(3)(i) of CENVAT Credit Rules, 2004 on the ground that inputs like pet coke and furnace oil are used as fuel for generation of electricity used in the manufacture of these exempted goods.
(ii) Demand of Rs.2,77,15038/- for the period 2001-02 to 2005-06, being 10% of the value of salt under Rule 6(3)(i) of the CENVAT Credit Rules, 2004 was raised on the ground that common inputs like HDPE bags and other inputs are used at soda ash plant and some portion of soda ash is cleared to salt plant for manufacture of salt, which is an exempted goods.
(iii) Denial of CENVAT credit of Rs.15,85,909/- availed on HDPE bags used for packing of soda ash which was further used in the manufacture of exempted goods like salt, during 2001-02 to 2005-06.

2.3 Commissioner of Central Excise, Rajkot vide Order-in-Original No. 23/Commr/2007 dated 21.08.2007, adjudicated the show cause notice dated 19.05.2006 and confirmed the entire demand of Rs.25,34,77,735/-. Aggrieved by the aforesaid Order-in-Original dated 21.08.2007, the Appellants filed an appeal along with stay application before Customs, Excise and Service Tax Appellate Tribunal (CESTAT) vide Appeal No. E/1227/2007 and Stay Application No. E/S/1242/07. Tribunal vide Final Order No. A/1243/2008-WZB/AHD dated 25.06.2008 decided the Appeal No. E/1227/2007 filed by the Appellants pertaining to the demand raised by show cause notice dated 19.05.2006. The Tribunal ordered in following manner:

(i) The Appellants offered to reverse an amount equal to 10% of the value of steam or electricity generated from the pet coke and furnace oil. The said contention of the Appellants was accepted inasmuch as the requirement of Rule 6(3)(b) was held to be fulfilled as steam is an exempted product and is generated at the 1st stage prior to electricity being supplied to the salt plant. The Tribunal held that so far as pet coke and furnace oil are concerned, only steam has to be taken as the exempted product because electricity and other exempted products are produced only subsequently. The Tribunal did not go into the question as to whether proportionate reversal of credit would amount to not taking credit at all. The demand of Rs.22,41,76,788/- was set aside in view of the reversal made by the Appellants equal to 10% of the value of steam.

(ii) The demand of Rs.2,77,15,038/- was set aside on the ground that duty has been paid on soda ash used in exempted products. However, the matter was remanded for limited purpose of verification of quantum of duty paid on soda ash.

(iii) The demand of Rs.15,85,909/- on CENVAT credit of HDPE bags used for packing of soda ash captively consumed in the manufacture of pure brine further used in the manufacture of pure salt was also set aside on the ground that the Appellants have paid excise duty on the entire quantity of soda ash captively consumed for purification of brine which was cleared for manufacture of pure salt.

Both revenue as well as assessee have challenged this order before Hon'ble High court of Gujarat vide the appeal Nos. 1956 of 2008 and 1248 of 2009 respectively. It is still pending.

2.4 The appeal no. E/11023/2017 relates to Show Cause Notice for the period 01.01.2008 to 30.09.2008 in the said Show Cause Notice, it was alleged that the appellant had availed cenvat credit on the pet coke/ fuel and other inputs used for generation of electricity / steam and also on HDPE Bags/ Jumbo Bags used as packing material for Soda Ash which was captively consumed in manufacture of exempted finished product namely salt. Thus, it was alleged that they had used common cenvatable inputs for manufacture of goods cleared on payment of central excise duty and also in manufacture of goods chargeable to nil rate of duty, namely, Vacuum Salt, Iodize Vacuum Salt and Pure Salt. It was alleged that salt falling under heading 2501, attracts nil rate of Central Excise duty and therefore, in terms of Rule 6(1) of Cenvat Credit Rules provides for cenvat credit shall not be allowed on such quantity of inputs used in manufacture non dutiable/ exempted goods.

2.5 Rule 6(2) of Cenvat Credit Rules requires that the manufacture engaged in manufacturing of dutiable and exempted goods from common inputs on which cenvat credit have been availed, should maintain separate accounts for receipt, consumption and inventory of common inputs. For assessees not maintaining such accounts, the Rule requires that they should reverse an amount equal to 10% of the value of the exempted finished goods under Rule 6(3) of Cenvat Credit Rules. The appellant had not maintained separate accounts of received consumption and inventory of inputs meant for used in manufacture of dutiable finished goods and exempted finished products and they were allegedly required to reverse an amount of 10% of the value of exempted finished goods cleared by them under Provision of Rule 6(3) of Cenvat Credit Rules. The common cenvatable inputs identified in the Show Cause Notice were pet coke and other inputs used for generation of electricity and HDPE bags/ Jumbo Bags used for manufacture of salt. Accordingly, the demand @ 10% on the total value of salt cleared by the appellant was raised. Learned counsel pointed out that they were reversing proportionate credit taken on inputs used as fuel and used in generation of electricity which cleared outside factory to the township. Learned Counsel pointed out that the fuel is first used to generate the steam which in turn is used to generate electricity and some steam is also used in manufacture of Salt which is exempted product. Learned counsel pointed out that w.e.f. 16.05.2005 they started taking only proportionate credit of duty paid on fuel oil/ pet coke used in generation of electricity used in soda ash plant. The credit was reversed on proportionate quantity of fuel oil / pet coke in respect of electricity cleared to the Salt plant at the beginning of the month. He pointed out that 90% of the Soda Ash manufactured, is cleared on payment of excise duty outside the factory and a small portion of the same is used captively for the purpose of purification of brine. In respect of captively consumed soda ash for purification of brine they availed benefit of Notification 67/1995-CE. He pointed out that liquid Ammonia and Sodium Sulphate are the inputs in the manufacture of Soda Ash on which Cenvat credit is availed. He pointed out that major portion of this purified brine is also further used for the manufacture of Soda Ash itself, and small portion brine is used for the purpose of making pure salt. He pointed out that Soda Ash manufactured and captively consumed for the purpose of purification of brine is packed in the HDPE bags/ jumbo bags on which cenvat credit was availed by them.

2.6 He pointed out that Show Cause Notice dated 09.03.2006 issued by the Additional Commissioner for the period 01.10.2001 to 15.05.2005 proposing denial of cenvat credit in respect of fuel oil and other inputs used for generation of electricity on the ground that part of the electricity is used for manufacture of exempted goods namely, Salt was set aside by Commissioner (Appeals) vide order in appeal dated 03.05.2007. Another Show Cause Notice dated 19.05.2006, the said Show Cause Notice was also decided by Commissioner confirming the demand. The appeal against the said orders was decided by Tribunal in its decision reported at 2008 (232) ELT 737 and in the said decision it was held that when the amount of 10% is paid on steam/ electricity, requirement of Rule 6(3B) is fulfilled. In the said decision following observation was made:

> "**9.** In view of the discussions above, the conclusions on the appeal before us are as under :-
>
> (a) The duty payment on steam made by the appellants is considered to be adequate in terms of Rule 6. However, the correctness of the duty paid requires to be verified and the matter is remanded to the original Adjudicating Authority for the limited purpose of verifying the correctness of the duty paid on steam by the appellants.
>
> (b) The duty demand of Rs. 2,77,15,038/- is set aside in view of the fact that the appellants have paid duty on soda ash used in exempted products. The correctness of the quantity of soda ash and the payment of duty on the same

requires to be verified and for this limited purpose the case is remanded back to the original Adjudicating Authority.

(c) The demand for Rs. 15,85,909/- on HDPE bags used for packing of soda ash captively consumed is also set aside."

2.7 He pointed out that following periodical Show Cause Notices were issued on identical grounds:

Sl. No.	S.C.N. No.	Date	Period covered in the S.C.N.	Amount (Rs.)
1	V.JMR.AR-Dwarka/Commr/45/2007	29-05-2007	01-04-2006 to 30-09-2006	12,49,92,444/-
2	V.JMR.AR-Dwarka/Commr/122/2007	10-09-2007	01-10-2006 to 31-03-2007	13,19,54,352/-
3	V.JMR.AR-Dwarka/Commr/23/2008	23-04-2008	01-04-2007 to 31-12-2007	19,30,19,650/-
4	V.JMR.AR-Dwarka/Commr/54/2008	02-02-2009	01-01-2008 to 31-09-2008	19,39,42,738/-

2.8 The Show Cause Notices mentioned at Serial No. 1,2,3 above were adjudicated vide OIO dated 04.04.2014 and proceedings were dropped on the basis of verification report in respect of proportionate reversal of cenvat credit taken by them on common inputs. The 4th Show Cause Notice in the list above is the subject matter of present proceedings.

2.9 The Show Cause Notice for the period 01.01.2008 to 30.09.2008 was adjudicated and demand for the period January 2008 to March 2008 was dropped by the Commissioner. However, the demand for the period April 2008 to September 2008 was upheld. The grounds for upholding the said demands so that the provisions of Rule 6 of Cenvat Credit Rules 2004 to as it existed during the period 01.04.2008 to 30.09.2008 were not followed. It was held that since the appellant have voluntarily opted not to maintain separate accounts of receipt and utilization of input and input services used in relation to manufacture of exempted as well as duty paid goods and they have opted under sub Rule 3(ii) of Rule 6 to reverse amount equal to cenvat credit attributable to input and input services and in manufacture of exempted goods cleared by them subject to conditions and procedure prescribed under sub Rule 3(A) of Rule 6. In the order it was held that

> *"As per the said provisions, they were required to determine for provisional reversal, an amount equal to the Cenvat Credit attributable to the inputs and input services used in or in relation to manufacture of exempted finished goods, by following the procedure prescribed in Rule 6(3A)(b) and reverse the same every month and inform the jurisdictional Range Superintendent alongwith the details thereof. Subsequently, they were required to determine amount for final reversal by following the procedure prescribed under Rule 6(3A)(c) of the Rules, at the end of the financial year and adjust the provisional reversed amount by the 30th June of subsequent F.Y. i.e. by 30.06.2009, as provided under Rule 6(3A)(g) ibid read with provisions of Rule 6(3A)(d) and (h) of the Rules."*

2.10 Learned Counsel argued that the appellant have reversed the amount required to be reversed under Rule 6. It was argued that the demand has been confirmed solely on the ground that the appellant have not followed the procedure of first provisionally reversing the amount and later giving the final calculation. Learned Counsel argued that this is only a procedural issue and substantive rights should not be denied on that ground.

2.11 Learned Counsel pointed out that another issue raised relates to demand on the ground that the appellant had used HDPE bags/Jumbo bags for packing of exempted Soda Ash which was consumed captively for manufacture of salt during the period of 01.01.2008 to 30.09.2008. Learned Counsel pointed out that the appellant had paid duty on the said Soda Ash used captively in the exempted products and therefore, question of reversal of credit on such HDPE jumbo bags does not arise. He pointed out that the same defense was accepted in the Tribunal order in the appellant's case for the prior by the Commissioner (Appeals). They have clearly made an assertion that exemption under Notification No. 66/95-CE of Central Excise Duty is not availed and Soda Ash used for captive consumption is cleared on payment of duty. Learned Counsel further pointed out that while calculating the amount of credit to be reversed only the steam used.

3. In respect of Appeal Nos. E/12446/2019, E/10669/2020, the issue is common. In both these appeals, the first issue raised by the appellant is that the demands have been raised for the period beyond the normal period of

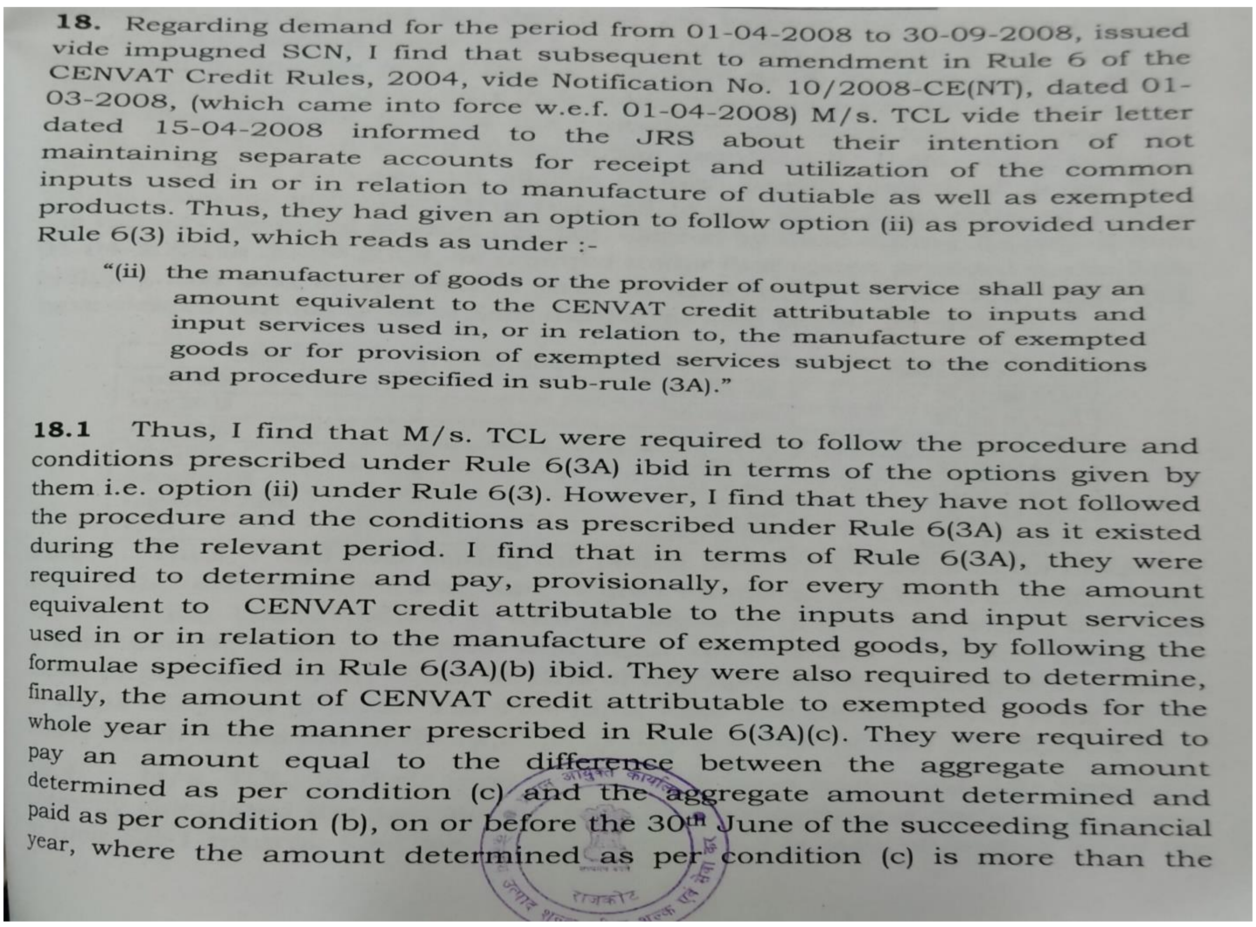
limitation. During the relevant period the appellants were availing the option of paying the 10% of the value of exempted goods cleared by them. In the instance case the appellants were to reverse the amount equal to 8%/10% of the value of steam used for manufacture of the exempted product. The demand has been raised seeking the demand of an amount of 8%/10% on the exempted Salt cleared by the appellant. He argued that the demand has been raised on the ground that the appellants were required to reverse credit separately not only on the steam used in the manufacture of the exempted product but also on the Salt manufactured by the appellant.

3.1 Learned Counsel pointed out that both the appeals involve invocation of extended periods of limitation. He pointed out that the issue regarding reversal of 8%/10% on the value of steam used in generation of electricity or in manufacture of Iodised salt has been decided by the Tribunal vide order in their own case reported at 2008 (232) ELT 732. He argued that the Tribunal clearly held that the duty payment of steam by the appellant is considered to be adequate in terms of Rule 6. He however pointed out that both the Revenue and as well as appellant are in appeal against the said order before the Hon'ble High Court of Gujarat and appeal has been admitted.

4. Learned AR relies on the impugned order.

5. We have considered the rival submission. We find that the appellants manufacture the Soda Ash which is a dutiable product and salt of various kinds which is an exempted product. The appellants are using certain common inputs in their electricity generation process on which they are availing Cenvat Credit. The appellant have used these common inputs for generation of steam which in turn is used partly for generation of electricity and partly in the process of manufacture of Soda Ash/salt plant in terms of Rule 6 of Cenvat Credit Rules, 2004. Since, the appellant were availing Cenvat Credit of common inputs which were used for both dutiable and

exempted final product. The appellants were required to follow the prescription of Rule 6 of the Cenvat Credit Rules. During the period involved in Appeal No. E/11023/2017 i.e. for period for 01.04.2008 to 30.09.2008, the appellant have reversed the Cenvat Credit on an estimate basis every month. The demand has been confirmed essentially on the ground that the appellant have failed to follow the procedure prescribed in Rule 6. The OIO observes as follows:-



18. Regarding demand for the period from 01-04-2008 to 30-09-2008, issued vide impugned SCN, I find that subsequent to amendment in Rule 6 of the CENVAT Credit Rules, 2004, vide Notification No. 10/2008-CE(NT), dated 01-03-2008, (which came into force w.e.f. 01-04-2008) M/s. TCL vide their letter dated 15-04-2008 informed to the JRS about their intention of not maintaining separate accounts for receipt and utilization of the common inputs used in or in relation to manufacture of dutiable as well as exempted products. Thus, they had given an option to follow option (ii) as provided under Rule 6(3) ibid, which reads as under :-

> "(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A)."

18.1 Thus, I find that M/s. TCL were required to follow the procedure and conditions prescribed under Rule 6(3A) ibid in terms of the options given by them i.e. option (ii) under Rule 6(3). However, I find that they have not followed the procedure and the conditions as prescribed under Rule 6(3A) as it existed during the relevant period. I find that in terms of Rule 6(3A), they were required to determine and pay, provisionally, for every month the amount equivalent to CENVAT credit attributable to the inputs and input services used in or in relation to the manufacture of exempted goods, by following the formulae specified in Rule 6(3A)(b) ibid. They were also required to determine, finally, the amount of CENVAT credit attributable to exempted goods for the whole year in the manner prescribed in Rule 6(3A)(c). They were required to pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the

5.1 After observing this , the Commissioner examined the data of credit reversal declared by the appellant in their ER-1 returns and came to the following conclusion.

18.6 From the data in Tables-A and B above, it is clear that they have simply calculated the proportionate amount of CENVAT credit on F.O. and Pet Coke used for generation of electricity and steam which were used in MUW plant. However, there is no such procedure prescribed in Rule 6(3A)(b) of the CENVAT Credit Rules, 2004, for determination of amount for provisional reversal every month. The reversal of proportionate amount of CENVAT credit was allowed upto 31-03-2008 as discussed in para supra and they have continued with the same procedure even after amendment in Rule 6 w.e.f. 01-04-2008. In view of the option filed by them under Rule 6(3)(ii) ibid, they were required to determine provisionally the amount of CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods viz. Salt for each month, by following the procedure prescribed under sub-clause (i) and (iii) of clause (b) under Rule 6(3A). However, they have failed to follow the procedure prescribed under Rule 6(3A), and therefore they were liable to pay an amount equal to 10% of the value of the exempted goods i.e. Salt cleared by them, in terms of the first option as provided under Rule 6(3)(i) ibid. I therefore find that the contentions made by them are not tenable and liable to be rejected.

18.7 M/s. TCL, in their written submissions (received on 04-01-2017) to the S.C.N., have contended that they have followed the procedure prescribed in

Rule 6(3A) and reversed monthly credit and declared the same in ER-1 returns.

18.8 In this regard, I find that M/s. TCL have not disputed the fact about their requirement of determination of amount for provisional reversal by following the procedure prescribed under sub-clauses (i) and (iii) of clause (b) under Rule 6(3A). They have, however, not followed this procedure at all, as discussed in the foregoing para. From the data mentioned in Tables above, it can be ascertained that they have simply calculated the proportionate amount of CENVAT credit pertaining to the inputs (separately for Pet Coke and F.O.) used in generation of electricity which was supplied to out-side factory and in manufacture of Salt on pro-rata basis. **Shri D. J. Raval, Assistant Manager (Commercial) of M/s. TCL, in his statement dated 30-03-2006, recorded under Section 14 of the Central Excise Act, 1944, has admitted that from 16-05-2005, they had started to reverse the proportionate CENVAT credit on Pet Coke and Fuel** used for generation of electricity consumed in exempted goods. Such reversal is not supported by any provisions of the CENVAT Credit Rules, 2004 w.e.f. 01-04-2008, as they were required to follow the procedure and the conditions prescribed under Rule 6(3A), which they have undisputedly not followed & hence they are not eligible to avail the benefit as prescribed under Rule 6(3)(ii).

18.9 I further find that M/s. TCL have submitted calculation of the amount –as detailed in Table above- alongwith a certificate issued by M/s. Umesh Ravani & Associates, Chartered Accountants, Jamnagar, after verification of the records of M/s. TCL for the period from 01-04-2008 to 31-09-2008, wherein he has certified as under :

> "M/s. Tata Chemicals Limited is availing Cenvat credit of input namely, pet coke & Furnace Oil. At the **beginning of the month**, **they are reversing the proportionate credit** on the basis of budget quantity to be used for manufacture of exempted product, i.e. Iodized Vaccum Salt, Vaccum Salt & Pure Salt. The reversal particulars are mentioned in the ER-1 monthly return filed with jurisdictional Excise authorities."

18.10 Thus from above certificate, issued by their Chartered Accountant, it is very clear that they were reversing proportionate amount of Cenvat credit of Pet Coke and F.O. at the beginning of the month on the likely quantity to be used during the month. Whereas, as per the provisions of Rule 6(3A), they were required to determine the amount to be reversed provisionally at the end of the month on the quantity of exempted goods cleared during the month as per the formulae prescribed under Rule 6(3A)(b) and reverse the same. Thereafter, at the end of the year, they were required to determine the amount to be reversed finally under Rule 6(3A)(c) and intimate the same to the jurisdictional Range Superintendent, by 30th June of the succeeding year, which M/s. TCL have admittedly failed to do. No such details are either available in the ER-1 returns filed by M/s. TCL for the period from April, 2008 to September, 2008. Thus, I hold that they have neither followed the procedure prescribed under Rule 6(3A), nor reversed the amount required to be reversed as per the procedure prescribed under Rule 6(3A)(b), which was required to be followed by them in terms of the option filed by them under Rule 6(3)(ii) of the Rules, and hence, the contentions made by them are without any basis and liable to be rejected.

... M/s. TCL have not maintained

5.2 On the basis of the above observation the Commissioner has denied the benefit of option (II) given under Rule 6 (3) as the appellant has failed to follow the procedure prescribed under Rule 6 (3A). We find that the appellant has been reversing the credit on a monthly basis and ideally they should have followed the procedure prescribed under Rule 6 (3A) for first ascertaining provisionally the proportional amount of credit required to be reversed and thereafter finalizing it in terms of Rule 6 (3A). However, the substantial benefit available in the law cannot be denied simply because the appellant had failed to follow the procedure prescribed in the law. The appellant have claimed that the reversal made by them is the exact amount that they were required to reverse.

5.3 The other issue involved in the instant case is if the appellants' are required to reverse the credit taken on HDPE bags and Soda Ash captively consumed for manufacture of salt. The appellants have categorically stated that they have paid duty on the captively consumed soda ash. They have also reversed entire credit taken on HDPE Bags. These facts needs verification. Moreover, demands of identical kind have been set aside for the prior period by Commissioner's earlier order.

5.4 In view of above, the demand in the appeal No E/11023/2017 is set aside and the matter is remanded to the original authority. The appellant should submit the final data to substantiate the amount of credit required to be reversed in terms of Rule 6 (3A) in terms of the earlier order of tribunal. The Commissioner also needs to verify if the credit taken on HDPE Bags has been reversed and if duty has been discharged on the captively consumed soda ash. The Commissioner will thereafter decide the issue on merit, considering that the appellants' have opted to exercise the option of reversal of proportionate credit provided under Rule 6(3A) of CCR.

5.5 The appeal No. E/12446/2019 and E/10669/2020 relate to common issue. The issue involve is whether the appellants are required to pay

8%/10% on value of only steam only or on the value of exempted salt as well. The exact same issue was earlier decided by Tribunal vide Order reported in 2008 (232) ELT 737 in para 9, the Tribunal has observed as follows:

> **6.** After hearing both the sides and considering the arguments advanced, we find that the offer made by the ld. Advocate that they have already reversed the amount payable if steam or electricity is taken as exempted product in respect of the final products viz. Iodized salt/vacuum salt has to be accepted. Even though the amount payable on electricity is higher than what is payable on steam, we feel that it would be appropriate if the amount is calculated on the cost of steam and not electricity since electricity comes after the steam but before the final product viz. Iodized salt vacuum salt. Further once the amount is paid on steam, the requirement of Rule 6(3)(b) is fulfilled and therefore we do not find any need to consider the arguments advanced in support of their claim that reversal of credit would amount to not taking the credit at all. Further other judgments cited by the party also need not have to be discussed since the requirements of Rule 6(3)(b) would get fulfilled. More over as far as the pet coke and furnace oil are concerned, steam has to be taken as a final product because electricity and other products are produced only subsequently. It is not the case of the Department or the appellant that steam or electricity are by-products and not final products as far as pet coke/furnace oil are concerned. In fact there is no other product which arises in this process.

> **"9.** In view of the discussions above, the conclusions on the appeal before us are as under :-
>
> (a) The duty payment on steam made by the appellants is considered to be adequate in terms of Rule 6. However, the correctness of the duty paid requires to be verified and the matter is remanded to the original Adjudicating Authority for the limited purpose of verifying the correctness of the duty paid on steam by the appellants.
>
> (b) The duty demand of Rs. 2,77,15,038/- is set aside in view of the fact that the appellants have paid duty on soda ash used in exempted products. The correctness of the quantity of soda ash and the payment of duty on the same requires to be verified and for this limited purpose the case is remanded back to the original Adjudicating Authority.
>
> (c) The demand for Rs. 15,85,909/- on HDPE bags used for packing of soda ash captively consumed is also set aside."

5.6 Thus as per Tribunal decision, there is no need for appellant to reverse 8%/ 10% of the value of the salt cleared by the appellant. However it is noticed that both the appellant and Revenue have challenged the said order in the Hon'ble High Court of Gujarat and the matter is still pending.

6. In the appeal filed by the Revenue the Hon'ble High Court has observed as follows:

> "(1) Whether the Tribunal was right in holding that the duty payment on steam made by the respondent is adequate in tems of rule 6 erstwhile Cenvat Credit Rules, 2004 prevailing during the period from 16.05.2005 to 31.03.2006?
>
> (2) Whether the Tribunal is right in law in not demanding duty vis-a-vis Soda ash?
>
> (3) Whether the Tribunal was right in remanding the case to the original adjudicating authority to get the correctness of the duty paid on the soda ash for the 5 year period by the respondent verified, and setting aside the demand of HDPE Bags used for packing of soda ash captively consumed without considering the Commissioner's findings that this payment had been made without authority and without proper calculation with sole intention to escape the future consequence of provision of rule (6) of the Central Excise Rules?"

And in the appeal filed by the appellant the Hon'ble High Court has observed as follows:

> "Whether on the facts and in the circumstances of the case, Rule 6(3)(b) of the cenvat credit rules 2004 would be applicable?"

7. Since the fundamental issue involve in this dispute is pending before the Hon'ble High Court, we set aside the impugned order and remand the matter back to original adjudicating authority to decide afresh after the issue, regarding the amount to be reversed by the appellant in these circumstances, is decided by the Hon'ble High Court.

8. The appeals are allowed by way of remand to Adjudicating Authority in above terms

(Pronounced in the open court on 16.11.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha