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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10524 of 2015

(Arising Out of OIO-DMN-EXCUS-000-COM-021-14-15 dated 12/12/2014 Passed By Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Biochem Pharmaceuticals Industries Ltd. ....Appellant

SURVEY NO 48, RINGHANWADA,
DAMAN-U T OF DAMAN

VERSUS

C.C.E. & S.T. Daman ......Respondent

3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI, GUJARAT-396191

APPEARANCE:

Shri Jigar Shah, Advocate for the Appellant
Shri Ghanshyam Soni, Joint Commissioner(AR) for the Respondent

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

Final Order No. A / 12456 /2021

DATE OF HEARING: 25.06.2021
DATE OF DECISION: 25.10.2021

RAMESH NAIR

The brief facts of the case are that the appellants are engaged in the manufacture of pharmaceuticals products falling under Chapter 30 of first schedule to the Central Excise Tariff Act, 1985. The appellant are also availing benefit of Cenvat Credit under Cenvat Credit Rules, 2004 on Input and Input Services. During the course of EA- 2000 audit conducted by the officers of Central Excise, Customs & Service Tax, Daman it was noticed that the assessee is engaged in the manufacture of dutiable as well as exempted goods i.e. P&P medicines, falling under the chapter 30 of the Central Excise Tariff Act, 1985. The exempted goods are cleared at nil rate of duty in terms of exemption Notification No. 6/2002- CE dated 0103.2002 as amended and Notification No. 4/2006-CE dated 01.03.2006 as amended. It was further noticed that the appellant availing cenvat credit for common inputs viz. Labour Contractor services, auditing and accounting services , insurance , promotion of product sales etc for which no separate accounts was maintained. Therefore, the department case is that the appellant is required to pay 10%/5% of the value of exempted goods in term of Rule 6 (3) (i) of Cenvat Credit Rules, 2004 prevailing at relevant time. Accordingly Show cause notice dated 02.02.2011 was issued wherein demand of an amount equal to 10%/5% exempted goods cleared by the appellant for the period January 2006- September 2010 was raised along with proposal for penalty under Rule 15 read with Section 11AC and interest under section 11AB of Central Excise, 1954. The Adjudicating Authority vide order-in- original dated 12.12.2014 confirmed the demand and imposed penalty and interest. Being aggrieved by the said OIO appellant filed the present appeal.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that on pointing by the audit officers the appellant have admittedly reversed the proportionate credit amount of Rs 21,95,293/- in terms of Rule 6(3) of Cenvat Credit Rules, 2004. The appellant have also paid interest on such cenvat credit. He submits that the reversal of proportionate credit and payment of interest there on is incompliance to provision of Rule 6(3) (ii) of Cenvat Credit Rules, 2004. Therefore no demand under Rule 6 (3) (i) at the rate of 10%/5% can be raised. He submits that this issue is no longer res-integra as the same has been settled time and again in the following judgments:-

- Himmat Glazed Tiles- 2018 (15) GSTL 486 (Guj.)
- Welspun Corp. Ltd – 2019 (368) ELT 179 (Tri. Ahmd)
- BHEL- GE Gas Turbine Services – 2021 (44) GSTL 399 (Tri.Hyd)
- Bombay Minerals Ltd – 2019 (29) GSTL 361 (Tri.- Ahmd)
- Mercedes Benz India (P) Ltd – 2015 (40) STR 381 (Tri.Mum)

He submits that in the above judgments the very same issue has been decided by the Hon’ble Gujarat High Court and this Tribunal.

2.1 Without prejudice, he further submits that Section 73 of Finance Act,2010 retrospectively amended the Rule 6 of Cenvat Credit Rules, 2004 whereby it allows the assessee to proportionately reverse the credit taken on the common inputs/ input services to the extent attributable to the manufacture of exempted final product wherein the dispute in this regard is pending. It requires the assessee to pay the credit amount along with interest and make an application before jurisdictional Commissioner along with documentary evidence and CA certifying the amount of credit attributable to the manufacture of exempted goods . He submits that in the present case the appellant have reversed the proportionate credit attributable to manufacture of exempted goods along with interest within a period of 6 months from the date on which the Finance Bill 2010 receives presidential Assent. The fact is not in dispute merely the appellant have not made any application before the jurisdictional Commissioner will not deprive the appellants from the benefit of such retrospective amendment. He submits that the application is merely a procedural requirement when the quantum on input service tax credit attributable to the manufacture of exempted goods already stands reversed along with interest. In support he placed reliance on the following judgments:-

- Shree Rama Multi Tech Ltd vs. UOI – 2011 (267) ELT 153 (Guj.)
- Maize Products – 2008 – TIOL- 596- HC- AHM- CX
- CCE vs. Ashima Dyecot 2008 (232) ELT 580 (Guj.) affirmed by Hon'ble Supreme Court – 2009 (240) ELT A41 (SC)
- CCE Bangalore vs. Himalaya Drug Co.- 2011- TIOL- 246- HC-KAR-CX
- CCE vs. Maan Pharmaceuticals – 2011 (263) ELT 661 (Guj.)
- CCE vs. Kudremukh Iron & Steel – 2011 (271) ELT 172 (Kar)

2.3 He further submits that as regard the judgment of M/s Nicholas Piramal Ltd- 2009 (244) ELT 321 (Bom) relied upon by the Authorized Representative, he submits that purpose and intention of retrospective amendment to Rule 6 of the Cenvat Credit Rules, 2004 in year 2010 was just to overcome the effects of the decision of M /s Nicholas Piramal Ltd (supra). Even if the lawmakers realized that if the said decision is given effect to then the genuine assesses like the appellant would be in great hardship. Therefore, it was proposed to amend the Cenvat Credit Rules, 2004 with retrospective effect.

2.4 He Submits that after the retrospective amendement of Cenvat Credit Rules, 2004 the decision of M/s Nicholas Piramal Ltd (supra) has lost its significance and cannot be relied upon.

2.5 He further submits that for raising majority demand for the period January 2006- September 2010 extended period was invoked as the SCN was issued on 02.02.2011. He submits that there is no suppression of fact as the entire detail of availment of cenvat credit and clearance of exempted goods were recorded in the books as well as shown in the monthly ER-1 Return. Therefore, the demand for the extended period is not sustainable. He prays for setting aside the impugned order and allowing the appeal with consequential relief.

3. Shri Ghanshyam Soni, Learned Joint Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He placed reliance on the following judgments:

- Nicholas Piramal Ltd- 2018 (244) ELT 321 (Bom)
- Unimed Technologies Ltd- 2018 (17) GSTL 181(Guj.)
- Chemito Technologies P Ltd- 2017 –TIOL-1161-CESTAT-Mum
- Prosafe International Ltd – 2020-TIOL- 835- CESTAT-DEL
- Vasantdada SSK Ltd – 2008-TIOL-1515-CESTAT-MUM
- Chemfab Alkalies Ltd- 2010 (251) ELT 264 (Tri.Chennai)
- CCE, Coimbatore vs. CESTAT, Chennai- 2013 (294) ELT 372 (Mad)
- Dolphin Lab Ltd- 2014- TIOL- 1446-CESTAT-AHM

- Salem Co-operative Sugar Mills Ltd- 2016 (339) ELT 572 (Mad)
- Ellenbarie Industrial Gases Ltd- 2009 (240) ELT 371 (Tri.Kol)
- Castleton Tea Co P Ltd – 2016 –TIOL- 1460-CESTAT-Kol

4. We have carefully considered the submission made by both the sides and perused the records. We find that though the appellant have admittedly used common input services in the manufacture and clearance of dutiable as well as the exempted final product but they have reversed the proportionate credit in respect of common input services attributed to the exempted final product. The department has invoked Rule 6 (3)(i) of Cenvat Credit Rules,2004 whereby demand of an amount equal to 10%/5% of value of the exempted final product has been confirmed. Once the appellant have reversed the proportionate cenvat credit and paid interest there on from the date of taking credit till the date of reversal, the situation becomes as if no cenvat credit was availed right from the date of availment of credit in respect of input services attributed to the exempted final product. Therefore, the department cannot demand an amount equal to 10%/5% of the exempted final product. It is an option of the appellant either to pay 10%/5% or to pay proportionate cenvat credit attributed to the exempted final product. The department cannot impose a particular option on the appellant. As regard the delay in reversal of credit the appellant has paid the interest therefore, the option of reversal of proportionate credit as provided under Rule 6(3) (ii) of Cenvat Credit Rules, 2004 stands complied with. This issue is no longer res- integra as the identical issue has been considered in various judgments. Some of the judgments with relevant order are reproduced below:-

- Mercedes Benz India (P) Ltd – 2015 (40) STR 381 (Tri.Mum)

> ***5.*** *We have considered the submissions made by both sides. From the facts and circumstances of the case and arguments put forth by rivals, we find that the issue to be decided by us is whether appellant is required to pay 5% of total sale value of the goods traded by them in terms of Rule 6(3)(i) when the appellant paid the actual credit*

attributed to the quantum trading sale in terms of Rule 6(3A) alongwith interest following the option available under Rule 6(3)(ii). Provisions for payment of 5% of the sale value of exempted goods is provided as one of the option given in Rule 6(3) of Cenvat credit Rules which is reproduced 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 used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service 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], except in the circumstances mentioned in sub-rule (2) :*

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 thereunder.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -

(a) the receipt, consumption and inventory of inputs used –

(i) in or in relation to the manufacture of exempted goods;

(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;

(iii) for the provision of exempted services;

(iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services -

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow [any one] of the following options, as applicable to him, namely :-

(i) pay an amount equal to five percent of value of the exempted goods and exempted services; or

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

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

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 [six 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 2 per cent. of value of the exempted services.

Explanation I. - 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.

Ld. Adjudicating Authority demanded 5% of the total sale of the trading turnover of goods on the ground that option provided under Rule 6(3)(i) is applicable on the ground that claim of the appellant on the option provided under Rule 6(3)(ii) is not available for the reason that appellant has not complied with condition provided under sub Rule (3A) of Rule 6 which provides that manufacturers of the goods shall follow certain procedure and conditions as provided under sub-rule (3A)(a)(i) to (iv) inasmuch as the appellant have not given said information in writing to the Jurisdictional Superintendent of Central Excise. Secondly the appellant, as provided under Claus (b) of sub-rule (3A) have not paid the amount of Cenvat on monthly basis and paid after almost 11 months.

5.1 *We have observed that in Rule 6(3) prevalent at the relevant time, two options have been provided :-*

(i) Payment of 5% on value of exempted services.

(ii) Payment of an amount equal to the Cenvat Credit amount attributed to input services used in or in relation to manufacture of exempted goods or provision of exempted services as provided under sub rule (3A)(b).

It is observed that the appellant has availed the option provided under sub-rule (3)(ii) of Rule 6 and paid an amount as per sub-rule (3A) along with interest and intimated the same to the jurisdictional superintendent in writing vide letter dated 14-3-2012. From the perusal of the said letter, we observed that the appellant categorically stated in the said letter that payment of Cenvat Credit, which they have made alongwith interest is in accordance with Rule 6 (3A) of Cenvat Credit Rules. With this act of the appellant, it is clear that the appellant opted for the option as provided under Rule 6(3)(ii) of the Cenvat Credit Rules, 2004, in accordance to which, the appellant are supposed to an amount equivalent to Cenvat Credit on input service attributed to the exempted service in terms of Rue 6(3A). In the present case, the appellant has availed Cenvat credit in respect of common input services, which has been used in relation to the manufacture of the final product as well as for trading of bought out cars. Therefore they are supposed to pay an amount equivalent to Cenvat credit which is attributed to the input service used for exempted service i.e. sale of car. In our view, three options have been provided under Rule 6(3) and it is up to the assessee that which option has to be availed. Revenue could not insist the appellant to avail a particular option. In the present case the appellant have admittedly availed option as provided under Rule 6(3)(ii) and paid an amount as required under sub-rule (3A) of Rule 6. As regard the compliance of the procedure and conditions as laid down for availing option as provided under sub-rule (3)(ii), we find that foremost condition is that the appellant is required to pay an amount as per the formula provided under sub-rule (3A) on monthly basis. However, we find that as per the provision, payment on monthly basis is provisional basis, therefore it is not mandatory that whole amount or part of the amount was required to be paid on every month. The appellant though belatedly calculated the amount required to be paid in terms provided under sub-rule (3A) of Rule 6, therefore to fulfill the condition, assessee should pay the said amount, which has been complied by the appellant.

5.2 *As regard the delay in payment, if any, the appellant have discharged the interest liability on such delay. Regarding the compliance as provided under Clause (a) of sub-rule (3A) of Rule 6 the appellant while exercising this option is required to intimate in writing to the Jurisdictional Superintendent, Central Excise, the following particulars namely :*

(i) Name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) Date from which the option under this clause is exercised or proposed to be exercised;

(iii) Description of dutiable goods or taxable services;

(iv) Description of exempted goods or exempted services;

(v) Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

As per the submission of the appellant and perusal of their letter along with enclosed details, it is found that more or less all these particulars were intimated to the Jurisdictional Superintendent. The appellant has been filing their returns regularly on monthly basis to the department. On perusal of the copies of the such return submitted along with appeal papers, it is observed that the particulars, as required under clause (a) of sub-rule (3A) of Rule 6 has been produced to the range superintendent. Therefore all the particulars which are required to be intimated to the Jurisdictional superintendent while exercising option *stand produced. Though these particulars have not been submitted specifically under a particular letter, but since these particulars otherwise by way of return and some of the information under their letters has admittedly been submitted, we are of the view, as regard this compliance of Rule 6(3A), it stood made.*

5.3 *As regard the contention of the adjudicating authority that this option should be given in beginning and before exercising such option, we are of the view that though there is no such time limit provided for exercising such option in the rules but it is a common sense that intention of any option should be expressed before exercising the option, however the delay can be taken as procedural lapse. We also note that trading of goods was considered as exempted service from 2011 only, thus it was initial period. We are also of the view that there is no condition provided in the rule that if a particular option, out of three options are not opted, then only option of payment of 5% provided under Rule 6(3)(i) shall be compulsorily made applicable, therefore we are of the view that Revenue could not insist the appellant to avail a particular option. In the present case admittedly it is appellant who have on their own opted for option provided under Rule 6(3)(ii). The meaning of the option as argued by the Ld. Sr. Counsel is that "option of right of choosing, something that may be or is chosen, choice, the act of choosing". From the said meaning of the term 'option', it is clear that it is the appellant who have liberty to decide which option to be exercised and not the Revenue to decide the same.*

5.4 *We find that the appellant admittedly paid an amount of Rs. 4,06,785/- plus interest, this is not under dispute. Therefore in our view, the appellant have complied with the condition prescribed under Rule 6(3)(ii) read with sub-rule (3A) of Rule 6 of Cenvat Credit Rules, therefore demand of huge amount of Rs. 24,71,93,529/- of the total value of the vehicle amounting to. Rs. 494,38,70,577/- sold in the market cannot be demanded. We are also of the view that Rule 6 of the Cenvat Credit Rules is not enacted to extract illegal amount from the assessee. The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that if the assessee does not opt any of the option at a particular time, then option of payment of 5% will automatically be applied. Therefore we do not understand that when the appellant have categorically by way of their intimation opted for option provided under sub-rule (3)(ii), how Revenue can insist that option (3)(i) under Rule 6 should be followed by the assessee.*

5.5 *As discussed above and in the facts of the case that actual Cenvat credit attributed to the exempted services used towards sale of the bought out cars in terms of Rule 6(3A) comes to Rs. 4,06,785/- where as adjudicating authority demanded an amount of Rs. 24,71,93,529/-. In our view, any amount, over and above Rs. 4,06,785/- is not the part of the Cenvat Credit, which required to be reversed. The legislator has not enacted any provision by which Cenvat credit, which is other than the credit attributed to input services used in exempted goods or services; can be recovered from the assessee.*

5.6 *We have gone through judgments relied upon by the Ld. A.R. In the arguments, we found that as regards the judgments on the issue of availment of Cenvat credit on the input or input services used in* *dutiable and exempted goods, the provision involved in the present case i.e. Rule 6(3) (i) (ii) (3A) has not been considered in the relied upon judgments, therefore the same are not applicable. As regard the other judgments, all these judgments having different facts and dealing with other provisions such as SSI exemption, exemption notification, etc., which are not identical to the fact of the present case, Moreover, in the present case the substantive provisions under Rule 6(3)(ii) and sub rule (3A) i.e. payment of equivalent to the Cenvat credit, which the appellant have complied with and if at all there is delay, the required interest has also been paid, therefore in the present case, there is no case of noncompliance of procedure and condition. Therefore the judgments cited by the ld. A.R. are not applicable.*

6.1 *In view of these observations, we are of the considered view that demand confirmed by the adjudicating authority has no legs and therefore the same cannot be sustained. The impugned order is set aside and Appeal is allowed.*

- Himmat Glazed Tiles- 2018 (15) GSTL 486 (Guj.)

These appeals arise out of common facts. We may record facts from Tax Appeal No. 627 of 2018. The department has challenged the judgment of Customs, Excise and Service Tax Appellate Tribunal raising following question for our consideration :

"Whether in the facts and circumstances of the case, the Tribunal is right in law to rely upon the decision of the Ahmedabad Tribunal in the case of M/s. Swiss Parenterals Pvt. Ltd. v. CCE & Service Tax Ahmedabad - 2014 (308) E.L.T. 81 (Tri. - Ahmd.). As in the said case the matter was remanded for verification of appellant's claim of reversal of Cenvat credit on inputs attributable to manufacture of exempted final products. Rule 6 of Cenvat Credit Rules, 2004?"

2. *Briefly stated the facts are that the assessee is a manufacturer of ceramic products. These are by-products and is called body clay powder which envisages nil rate of duty. The assessee did not maintain separate accounts and initially availed Cenvat credit on the exempt product also. However, subsequently, it appears that such credit so availed was reversed with interest. The department however still objected to such procedure.*

3. *The appellate authority and the Tribunal held that since the assessee had reversed the Cenvat credit with interest, no further adverse consequence should follow. We notice that this Court in case of Commissioner v. Ashima Dyecot Ltd. reported in 2008 (232) E.L.T. 580 has observed that reversal of credit amounts to non-availment.*

4. *We do not find any error in the view of the Tribunal. Tax appeals are dismissed.*

- Ashima Dyecot 2008 (232) ELT 580 (Guj.) affirmed by Hon'ble Supreme Court – 2009 (240) ELT A41 (SC)

5. *We have considered the submissions made by the learned Standing Counsel appearing for the Department and we have also gone through the orders passed by the authorities below. Though there is not much discussion in the order of the Tribunal, the learned Commissioner of Central Excise, has discussed the entire issue at great length. After discussing about the relevant provisions contained in the notifications, rules and submissions of the assessee's representative, the Commissioner of Central Excise has decided the matter against the asscssee only on the ground that* *manufacturer had not maintained separate books of accounts for the goods availing of the benefit of Notification No. 29 of 2004 and for the goods availing of the benefit of Notification No. 30 of 2004. He has further observed that the circular does not speak of final goods or inputs, but, it refers to the goods only and then, he came to the conclusion that as the subjected two notifications refer to the aspect of credit being taken or otherwise of inputs, maintenance of separate accounts for inputs is of prime importance. Since this condition was not satisfied, he confirmed the levy of duty, penalty, etc. This finding of the learned Commissioner of Central Excise is not in consonance with the observations made and the ratio laid down by the Honourable Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. (supra).*

6. *The findings rendered by the Honourable Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. (supra) are clearly applicable to the present matters. In that case also, the case of the Department was that reversal of credit entries is not permitted by the rules. The assessee is not entitled to remove the copper wires without payment of duty since credit of the duty paid on the inputs used in the manufacture of copper wire had already been taken in accordance with Rule 57A. Once appropriate entries have been made in the register, there is no rule under which the process could be reversed. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. But, the Court's attention was drawn to the departmental circular according to which in a case where the manufacturer produces dutiable final products and also final goods which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. Based on this, the Court held that the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid and in view of this clarification by the Department, the Court saw no reason that why the assessee should not make a debit entry in the credit account before removal of the exempted final product and hence, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. The Court, therefore, took the view that the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken the credit of the duty paid in the inputs used in manufacture of these goods. The ratio laid down in this decision is squarely applicable to the facts of the present case and maintenance of separate books of accounts at the initial stage cannot be considered to be a condition precedent for the purpose of claiming the benefit of exemption to the respondent-assessee.*

7. *Even Rule 6(3) of the Cenvat Credit Rules, 2004 says that notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely :-*

(a) if the exempted goods are -

(i) xxx xxxxxxxxx

(ii) xxx xxxxxxxxx

(iii) xxx xxxxxxxxx

(iv) xxx xxxxxxxxx

(v) xxx xxxxxxxxx

(vi) final products falling within Chapter 50 to 63 of the said First Schedule;

xxx xxxxxxxxxxxxxxxxxxxxx

Even otherwise, Rule 3 says that the manufacturer or producer of the final product or provider of output services shall be allowed to take credit on various items enumerated therein.

This issue had come up for consideration before the Allahabad High Court in the case of Hello Minerals Water (P) Ltd. v. Union of India, reported in 2004 (174) E.L.T. 422 (All.), wherein it is held that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence, the benefit has to be given of the notification granting exemption/rate of duty on the final products since the reversal of credit on the input was done at the Tribunal's stage. While arriving at this conclusion, the Allahabad High Court has referred to various judgments under which such reversal was made subsequently and still the benefit was given to the assessee.

8. *Since the Tribunal has correctly applied the law laid down by the Honourable Supreme Court and the issue is well settled, we are of the view that no question of law, much less any substantial question of law, arises out of the order of the Tribunal and hence, all the three appeals are, accordingly, dismissed.*

- Welspun Corp. Ltd – 2019 (368) ELT 179 (Tri. Ahmd)

6. *We have carefully considered the submissions made by both the sides and perused the records. The limited issue to be decided by us is that in a case where at the time of receipt of input services, the appellant availed Cenvat credit on the entire service and on pointing out by the audit party they reversed the Cenvat credit in respect of input services attributed to the exempted goods/non-excisable goods along with interest, whether the demand confirmed by the Revenue under Rule 6(3) i.e. 5%/10% on value of exempted goods is legal and proper. The appellant is not disputing that the Cenvat credit in respect of input services attributed to exempted goods namely Steam, Fly-Ash and non-excisable goods i.e. electricity sold outside their factory, is not admissible and they have admittedly reversed the proportionate Cenvat credit and also paid the interest from the date of taking credit till the date of reversal. For ease of reference, we reproduce below the Rule 6(3) of Cenvat Credit Rules, 2004 :*

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely :-

(i) the manufacturer of goods shall pay an amount equal to five per cent. of value of the exempted goods and the provider of output service shall pay an amount equal to six per cent. of value of the exempted services; or

(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).

Explanation I. - 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 II. - For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.

From the plain reading of the Rule 6(3), it can be seen that the law provided three options to the assessee (I), (II) accordingly the assessee has option either to pay 5%/10% of value of exempted goods or pay an amount determined under sub-rule (3A) i.e. proportionate credit attributed to the exempted goods. The appellant rightly availed the option of sub-rule (3A) of Rule 6 of CCR, 2004, the only lapse on the part of the appellant is that the payment of Cenvat credit was made belatedly, however the appellant have paid interest for the period right from availing the Cenvat credit till the payment/reversal of proportionate Cenvat credit which create a position as if the appellant have not availed Cenvat credit right from the date when Cenvat credit was availed. Therefore there is no reason for imposing option under Clause (i) of Rule 6(3) i.e. payment of 5%/10% of the value of exempted goods. This issue has been considered by this Tribunal time and again, though the appellant have relied upon almost 20 judgments on this issue which are directly applicable. However, we are referring some of the judgments as under :

- *The Hon'ble Tribunal in the case of Jay Balaji Industries Ltd. - 2017 (352) E.L.T. 86 (T) held in para 5 that :*

"5. The Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. v. CCE, Nagpur - 1996 (81) E.L.T. 3 (S.C.) which has been followed in many other decisions of the High Court as well as the Tribunal has held that once Cenvat credit is reversed, it is to be considered ab initio not availed. In the light of this judgment of the Hon'ble Supreme Court, the reversal of Cenvat credit already made by the appellant is to be considered as not taken ab initio.

The Government has introduced the facility of proportionate reversal w.e.f. 1-4-2008 to mitigate the difficulties faced by manufacturers to maintain separate accounts for inputs/input services as well as when the same are commonly used for dutiable as well as exempted products/services. Though detailed procedure starting with an option to be exercised by manufacturer has been prescribed, in the present case, the appellant has not followed the same. However, it is on record that they have already reversed an amount claimed to be proportionate. It is also pertinent to record that this has been done by the appellant even before the issue of the show cause notice in this case. We are of the considered view that the failure of the appellant to follow the procedure perfectly should not come in the way of extending the substantial benefit of proportionate reversal. However, we find that in the order passed by the lower authority, he has not given any finding as to whether the reversal already made satisfies the test of proportionate reversal in terms of quantum of reversal. Hence, we are of the considered opinion that the matter is to be remanded to the original adjudicating authority to verify whether the amount of Cenvat credit already reversed along with interest satisfies the requirement of proportionate reversal. We also make it clear that there is no justification for demand of the amount equivalent to 10%/5% of the value of electricity wheeled out. The appellant should be given an opportunity to argue their case before the original adjudicating authority who is directed to pass order expeditiously within a period of three months of the date of receipt of this order."

- *The Hon'ble Tribunal in the case of Swiss Parental Pvt. Ltd. - 2014 (308) E.L.T. 81 (T) held in para 7.3 that :*

"7.3 We find that the ratio of the above case laws is squarely applicable to the appellant's case. We, therefore, hold that if Cenvat credit attributable to inputs used in the manufacture of exempted final products is reversed along with interest subsequent to removal of exempted final products, then the appellant cannot be said to have taken credit of inputs used in or in relation to the manufacture of exempted final products, and they need not pay an amount @ 8% or 10% of the sale price of exempted final products. The adjudicating authority has worked out the demand of Rs. 88,41,543/- on the basis of 8% or 10% of the sale price of exempted final products cleared by the appellant during the material period, while the respondent claims that the input credit attributable to manufacture of exempted final products is only Rs. 7,85,573/-, which they have reversed. In the present case we observed from the case records that the appellant has furnished relevant data/documents available at pages 372 to 396 of the appeal papers filed in Appeal No. E/449/2011 showing Cenvat credit reversed/required to be reversed on inputs used in the manufacture of exempted final products during the material period. The appellant has also placed on record copies of 21 invoices at pages 349 to 370 of the appeal papers of Appeal No. E/449/2011 showing receipt of exempted input (Alpha Beta Arteether) of value of about three crore rupees during the material period, for which no Cenvat credit could be taken. In view of these facts on record, we find that the method adopted by the adjudicating authority for working out of the demand of Rs. 88,41,543/-, on the basis of 8% or 10% of the sale price of dutiable and exempted final products, is not maintainable. We, therefore, remand the matter to the adjudicating authority for proper verification of appellant's claim of reversal of Cenvat credit on inputs attributable to manufacture of exempted final products on the basis of appellant's records after affording opportunity to the appellant to explain their case before deciding the issue of quantum of Cenvat credit in remand proceedings."

- *The Hon'ble Supreme Court in the case of Bombay Dyeing & Mfg. Co. Ltd. - 2007 (215) E.L.T. 3 held in para 8 that :*

"8. There is no merit in this civil appeal. Under the notification, mode of payment has not been prescribed. Further, exemption is given to the final product, namely, grey fabric under the Central Excise Act, 1944, levy is on manufacture but payment is at the time of clearance. Under the Act, payment of duty on yarn had to be at the spindle stage. However, when we come to the Exemption Notification No. 14/2002-C.E., the requirement was that exemption on grey fabrics was admissible subject to the assessee paying duty on yarn before claiming exemption and subject to the assessee not claiming Cenvat credit before claiming exemption. The question of exemption from payment of duty on grey fabrics arose on satisfaction of the said two conditions. In this case, payment of duty on yarn on deferred basis took place before clearance of grey fabrics on which exemption was claimed. Therefore, payment was made before the stage of exemption. Similarly, on payment of duty on the input (yarn) the assessee got the credit which was never utilized. That before utilization, the entry has been reversed which amounts to not taking credit. Hence, in this case, both the conditions are satisfied. Hence item no. 1 of the table to Notification No. 14/2002-C.E. would apply and accordingly the grey fabrics would attract nil rate of duty."

- *In the case of Aster Pvt. Ltd. - 2016 (43) S.T.R. 411, it was held that :*

"The above Rule 6(3A) states that while exercising the option, the manufacturer of goods or the provider of output service shall intimate in writing the department regarding the option exercised. In the present case, admittedly there is no intimation given by the appellant

informing his exercise of option. The contention of the department is that when the appellant has not intimated his option in writing then the appellant is bound to pay the duty amount calculated under the first option. I am afraid I cannot endorse this contention. The said rule does not say that on failure to intimate, the manufacturer/service provider would lose his choice to avail second option of reversing the proportionate credit. Rule 6(3A), as seen expressly stated is nothing but a procedure contemplated for application of Rule 6(3). Therefore, the argument of the Revenue that the requirement to intimate the department about the option exercised, is mandatory and that on failure, the appellant has no other option but to accept and comply Rule 6(3)(i) and make payment of 5%/10% of sale price of exempted goods/value of exempted services is not acceptable or convincing. The Rule does not lay down any such restriction. The procedure and conditions laid in Rule 6(3A) is intended to make Rule 6(3) workable and not to take away the option available to the assessee. In any case, at no stretch of imagination can it be said that on failure to intimate the department, Rule 6(3)(i) would automatically come into application."

- *The Hon'ble Tribunal in the case of Cranes & Structural Engineers - 2017 (347) E.L.T. 112 (T) held in para 4.1 that :*

"4.1 On analysis of Rule 6(3A), I find that while exercising the option, the manufacturer of goods or the provider of output service shall intimate in writing to the Department regarding the option exercised. In the present case, admittedly there is no intimation given by the appellant informing the exercise of his option. The argument of the Department is that when the appellant has not intimated his option in writing then the appellant is bound to pay the duty amount calculating under the first option. According to me, this argument is devoid of merit, because the said Rule does not say anywhere that on failure to intimate, the manufacturer/service provider would lose his right to avail second option of reversing the proportionate credit. Sub-rule (3A) of Rule 6 is only a procedure contemplated for application of Rule 6(3). Consequently, the argument of Revenue is that the appellants exercising option is mandatory and on its failure, the appellant has no other option but to accept and apply Rule 6(3)(i) and make payment of 5%/10% of the sale price of the exempted goods or exempted services is not acceptable, because the Rule does not lay down any such restriction and this has been held in the judgments cited supra. It has been held in the judgment cited supra that the condition in Rule 6(3A) to intimate the Department is only a procedural one and that such procedural lapse is condonable and denial of substantive right on such procedural failure is unjustified. Therefore, keeping in view the facts and evidence on record, the demand raised by the Revenue is not legal and proper. Moreover, the demand raised by the Revenue is also hit by limitation as the appellant reversed the pro rata credit with interest on 31-7-2010 itself and communicated to the Department whereas the show cause notice was issued only on 13-3-2012 which is beyond the period of one year and the allegation of the Department regarding suppression of fact is also not tenable because the appellant has disclosed these facts in their periodical ER1 returns filed by them. Therefore, the impugned order is not sustainable on merit as well as on limitation and therefore, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any."

7. *In view of the above, the issue is no longer res integra, therefore, the demand confirmed equal to 5%/10% of value of the exempted goods is not sustainable. As regard the submission of Ld. Counsel regarding the limitation, we find that firstly, the appellant had not utilized the Cenvat credit attributed to the exempted goods, secondly the fact regarding the availment of credit and manufacture and clearance of exempted and non-excisable goods are very much on* *record, therefore, the suppression of fact cannot be attributed on the part of the appellant. We also find that since the issue regarding reversal of Cenvat credit under Rule 6(3) is contentious and various cases on the same issue have been made out which can be seen from such of judgment given above, therefore, on the issue related to Rule 6(3) particularly in the facts of the present case it cannot be said that the appellant had mala fide intention to evade payment of duty. Therefore, demand for the extended period is also hit by limitation for the same reason the penalties imposed are also unsustainable.*

8. *As per our above discussion, we hold that proportionate credit paid by the appellant along with interest is sufficient compliance under Rule 6(3), accordingly the same is maintained. The demand under Rule 6(3)(i) i.e. 5%/10% of value of the exempted goods and all the penalties are set aside. The appeal is allowed in the above terms.*

- Shree Rama Multi Tech Ltd vs. UOI – 2011 (267) ELT 153 (Guj.)

8. Rule 57C of the Rules laid down that no credit of the specified duty paid on the inputs used in the manufacture of a final product shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. Rule 57CC of the Rules as it stood at the relevant time made provision for "Adjustment of credit if final products are exempted." Under the said rule where a manufacturer was engaged in the manufacture of any final product which was chargeable to duty as well as any other final product which was exempt from the whole of the duty of excise leviable thereon or was chargeable to nil rate of duty and the manufacturer took credit of the specified duty on any input (other than inputs used as fuel) which was used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (2) are complied with, pay an amount equal to eight per cent of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of goods at the time of clearance from their factory by adjustment in the credit account maintained under sub-rule (3) of Rule 57G or in the accounts maintained under Rule 9 of sub-rule (1) of Rule 173G or if such adjustment is not possible for any reason, by cash recovery from the manufacturer availing of the credit under Rule 57A. Sub-rule (2) thereof provided that in respect of inputs (other than inputs used as fuel) which are used in or in relation to the manufacture of any goods, which are exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, the manufacturer shall maintain separate inventory and accounts of the receipt and use the inputs for the aforesaid purpose and does not take credit of the specified duty on such inputs.

9. In the present case, since it was not possible to maintain separate accounts in respect of the common input viz., ink in terms of sub-rule (2) of Rule 57CC the petitioners had initially taken credit of the specified duty on such inputs. However, whenever they utilised ink in the manufacture of printed labels, they debited the proportionate amount of Modvat credit taken thereon to comply with the provisions of Rule 57C of the Rules.

10. Subsequently vide Section 69 of the Finance Act the Central Excise Rules, 1944 have been amended by inserting Rule 57CCC. It may be germane to refer to the provisions of Section 69 of the Finance Act, 2010 which reads thus :

"69. Amendment of Central Excise Rules, 1944 by insertion of new rule 57CCC. — (1) The Central Excise Rules, 1944, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Fourth Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule, against the rule specified in column (2) of that Schedule.

(2) Where a person opts to pay the amount in accordance with the provisions of the Central Excise Rules, 1944 as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of the final products, which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

(3) The Commissioner of Central Excise shall, on receipt of an application under sub-section (2), verify the correctness of the amount paid within a period of two months from the date of receipt of the application and in case the amount so paid is found to be less than the amount payable, he shall call upon the applicant to pay the differential amount along with interest, which shall be paid within a period of ten days from the date of receipt of the communication from the Commissioner in this regard.

(4) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 1st day of September, 1996 and ending with the 31st day of March, 2000, relating to the provisions as amended by subsection (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(5) Notwithstanding the supersession of the Central Excise Rules, 1944, for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this section not come into force.”

11. The newly inserted Rule 57CCC of the Central Excise Rules, 1944 reads thus :

THE FOURTH SCHEDULE

[See section 69(1)]

Sl. No.	**Provisions of Central Excise Rules, 1944 to be amended**	**Amendment**	**Period of effect of amendment**
(1)	(2)	(3)	(4)
1.	Insertion of new rule 57CCC.	In the Central Excise Rules, 1944, after rule 57CC, the following rule shall be inserted, namely : — **“57CCC. Reversal of Actual Credit.**— Where a dispute relating to adjustment of credit on inputs used in or in relation to exempted final products relating to the period beginning on	1st day of September, 1996 to 28th day of February, 1997 (both days inclusive).

		the 1st day of September, 1996 and ending with the 28th day of February, 1997 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2) of rule 57C and sub-rules (1) and (2) of rule 57CC, a manufacturer availing credit of specified duty in respect of any inputs, other than inputs used as fuel, and manufacturing final products which are chargeable to duty and also other final products which are not so chargeable to duty or chargeable to nil rate of duty, shall pay an amount equivalent to such credit attributable to inputs used in, or in relation to the manufacture of, such final products which are not chargeable to duty or chargeable to nil rate of duty, before or after the clearance of such goods : Provided that the manufacturer shall pay an interest at the rate of twenty-four per cent, per annum from the date of clearance of goods till the date of payment of the said amount.".	
2.	Rule 57CCC of the Central Excise	In the Central Excise Rules, 1944, for rule 57CCC, the	1st day of March, 1997 to 31st day of

	Rules, 1944 as inserted by section 69 of the Finance Act, 2010.	following rule shall be substituted, namely :— "**57CCC. Reversal of Actual Credit.** —Where a dispute relating to adjustment of credit on inputs used in or in relation to exempted final products relating to the period beginning on the 1st day of March, 1997 and ending with the 31st day of March, 2000 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2) of rule 57C and sub-rule (1) and sub-rule (9) of rule 57CC, a manufacturer availing credit of specified duty in respect of any inputs, other than inputs used as fuel, and manufacturing final products which are chargeable to duty and also other final products which are not so chargeable to duty, shall pay an amount equivalent to such credit attributable to inputs used in, or in relation to the manufacture of, such final products which are not chargeable to duty, before or after the clearance of such goods : Provided that the manufacturer shall pay an interest at the	March, 2000 (both days inclusive).

		rate of twenty-four per cent, per annum from the date of clearance of goods till the date of payment of the said amount.”	

12. Thus, vide sub-section (1) of the said section a new rule, viz., Rule 57CCC has been introduced in the Central Excise Rules, 1944 with retrospective effect and vide sub-section (2) thereof it has been provided that where a person opts to pay the amount in accordance with the provisions of Central Excise Rules, 1944 as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of final products which are exempted from the whole of the duty of excise leviable thereon or chargeable to Nil rate of duty, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President. The Finance Bill, 2010 has received the assent of the President on May 2010.

13. Sub-section (4) of Section 69 of the Finance Act, 2010 provides that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from 1st day of September 1966 and ending with the 31st day of March 2000, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) has been in force at all material times.

14. The dispute in the present case relates to the entitlement of the petitioners to reverse proportionate amount of credit in respect of the final product carrying nil rate of duty. At the relevant time, in the light of the provisions of Rule 57CC of the Rules, the entitlement of the petitioner to reverse the credit to the extent of common inputs used in the manufacture of goods which carried nil rate of duty was in doubt. However, subsequently, by the introduction of Rule 57CCC of the Central Excise Rules, the situation has been taken care of inasmuch as the said rule which has been given retrospective effect from 1996 provides for reversal of the actual credit by the manufacturer availing credit of specified duty in respect of inputs used for manufacture of final products which are chargeable to duty as also other final product which are not chargeable to duty or chargeable to Nil rate of duty, by payment of amount equivalent to the credit attributable to input used in or in relation to the manufacture of such final products which are not chargeable to duty or chargeable to nil rate of duty before or after the clearance of such goods. Sub-section (2) of Section 69 of the Finance Act, 2010 provides that where a person opts to pay the amount in accordance with the provisions of Central Excise Rules, 1944 as amended by sub-section (1), he is required to pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documents as laid down therein within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

15. Examining the facts of the present case in the light of the newly amended statutory scheme, in the present case the petitioners were *bona fide* prosecuting theremedy before this Court, hence, pending the petition they have not made any application as contemplated under sub-section (2) of Section 69 of the said Act. It is the case of the petitioners that they are not required to make any such application since they have already reversed the amount of credit taken in respect of the common input used in the manufacture of product carrying nil rate of duty. However, in the light of the amended provisions of the Central Excise Rules, 1944 it is not necessary to consider the rival contentions on merits since the amended provisions take care of a situation like the present one.

16. In view of the above discussion, keeping in view the amended provisions of the Central Excise Rules, 1944 as amended by Section 69 of the Finance Act, 2010, the petition is required to be allowed in the following terms :

(i) The impugned order dated 30th March 2000 passed by the respondent No. 3, Assistant Commissioner, Central Excise, Ahmedabad is hereby quashed and set aside.

(ii) The matter is restored to the file of the Adjudicating Authority who, after giving due opportunity of hearing to the petitioners, shall re-determine the credit taken on the common input, viz., ink, insofar as the same relates to the demand raised by the two show causes notices referred to in the impugned order.

(iii) The petitioners shall produce the necessary evidence in the form of certificate from a Chartered Accountant or a Cost Accountant for the relevant period certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of final product which are exempt from the whole duty or chargeable to Nil rate of duty along with other documentary evidence for the relevant period.

(iv) If any further credit is required to be reversed, the same shall be reversed within four weeks from the date of receipt of communication from the respondents.

Rule is made absolute to the aforesaid extent with no order as to costs.

- BHEL- Ge Gas Turbine Services Pvt Ltd- 2021 (44) GSTL 399(Tri.Hyd)

"6. The facts involved in this case are not in dispute that the appellant had availed common input services, which were used for providing the taxable output services as well as the trading activities and that the appellant had reversed the quantum of Cenvat Credit attributable to such trading activities. We have noticed from the impugned order at paragraph 9.7 that the appellant had deposited the service tax amount in respect of the cenvat credit taken for providing the trading activities. Since, the Cenvat Credit amount towrds trading of goods was paid by the appellant, it has to be construed that no cenvat credit was at all taken by the appellant in respect of the common input services, In this context, the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires(P) Ltd vs. Collector of Central Excise, Nagpur- 2002-TIOL- 41-SC-CX= 1996(81)ELT 3(SC) have ruled that on reversal of credit, the asseessee cannot be said to have taken credit of duty on the inputs utilized in the manufacture of exempted final products. However, the appellant is liable to compensate the Government exchequer by paying the interest amount between the period of taking cenvat credit on the common input services and actual payment of such cenvat amount into the Central Government account.

7. In view of above, the impugned order is set aside and the appeal is allowed, to the extent it has confirmed the service tax demand and imposition of penalties on the appellant. The impugned order sustains, insofar as it has confirmed the interest demand on the *appellant. However, the department should quantify the actual amount of the interest payable by the appellant in terms of Paragraph 6 above.*

8. In the result, the appeal is partly allowed."

In view of the above judgment it settled that once the assessee reversed the proportionate credit in respect of input and input services attributed to the exempted final product and paid interest if any for the delayed reversal no further demand such as 10%/5% of value of the exempted goods can be raised.

4.1 Without prejudice to our above finding, We further find that the appellant have argued that during the relevant period the retrospective amendment in Cenvat Credit Rules vide Section 73 Finance Act, 2010 was inforce according to which only proportionate credit along with interest was supposed to be reversed. We find that even as per the said amended provision there is no substance in the case of the department for demanding 10%/5% of the value of the exempted goods.

4.2 As regard the limitation we find that since the appellant have been declaring the details of cenvat credit availed even in respect of common input services used for the manufacture of dutiable as well as exempted goods in their records and also filed ER-1 Return wherein the availment of cenvat credit was disclosed, no suppression of fact or willful misstatement, fraud or collusion or contravention of provision to evade payment of duty can be attributed to the appellant. Therefore, the demand of extended period is not sustainable also on the ground of limitation. The demand of an amount equal to 10%/5% of exempted value is not sustainable. However, the appellant has reversed the credit amount of Rs 21,95,293/- along with interest which is maintained and remaining demand and interest there on, and entire penalty are set aside.

5. Accordingly, the impugned order is modified to above extent. Appeal is allowed in the above terms with Consequential relief, if any, in accordance with law.

(Pronounced in the open court on 25.10.2021)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Geeta