

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

Appeal No. E/12480/2018-SM

[Arising out of OIA-CCESA-SRT-APPEALS-PS-111-2018-19 dated 25.06.2018 passed by the
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s D J Dyechem

Appellant

Vs

C.C.E. & S.T.,- Daman

Respondent

Represented by:

For Appellant: Shri Aanand Nainawati (Advocate)

For Respondent: Shri T. K. Sikdar (A.R.)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing/Decision: 12.12.2018

Final Order No. A / 12975 /2018

Per: Ramesh Nair

The issue involved in the present case is that whether the appellant is required to pay 6% in Terms of Rule 6 of Cenvat Credit Rules, 2004 in respect of by- product namely, Sulphuric Spent Acid arising during the course of manufacture of LABSA ("Linear Alkyl Benzene Sulphonic Acid").

2. Sh. Aanand Nainawati Ld. Counsel appearing on behalf of the appellant at the outset submits that the identical issue has been considered by this Tribunal in the case of CCE, Ahmedabad-III Vs. Nirma Ltd. 2010 (261) ELT 635 (Tri.Ahmd.), wherein it was held that in case of by-product, the payment of 10% of transaction value under Rule 6 of Central Credit rules, 2004 is not required to be paid following the Hon'ble Bombay High Court judgment in the case of Rallis India Vs. UOI reported in 2009 (233) ELT 301 (Bom). The judgment in the case of Nirma Ltd. (Supra), the Revenue carried this matter to High Court then Supreme Court, in that cases their lordships have confirmed the order of

the tribunal, therefore, issue is no longer res-integra. He also placed reliance on the judgment of Hon'ble Supreme Court in the case of UOI Vs. Hindustan Zinc Ltd. 2014 (303) ELT 321 (SC).

3. Sh. T.K. sikdar Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of records, I find that whether the appellant is required to pay 6% of value of exempted goods i.e. spent Sulphuric Acid in terms of Rule 6 of Cenvat Credit Rules, 2004. I find that the said spent Sulphuric Acid is admittedly by-product arise during the manufacture of LABSA (Linear Alkyl Benzene Sulphonic Acid) in Terms of Rule 16 (3.7) of Central Excise Manual, it is clarified that cenvat credit allowed in respect of inputs contained in waste, refuse or by-product, therefore, even though by-product is cleared without payment of duty, credit is still available on the inputs contained therein. Consequently, Rule 6 which is for the purpose of denial of cenvat credit in respect of exempted goods shall not apply. This issue has been considered by this Tribunal which was upheld by Hon'ble Supreme Court in the case of Nirma Ltd. (Supra). Hence issue is no longer under dispute, accordingly, impugned order is set aside. Appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Seema