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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10466 of 2017- DB

(Arising out of OIO-VAD-EXCUS-002-COM-035-16-17 dated 18/11/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Sun Pharmaceutical Industries Ltd ....Appellant
Hear Anand Kendra,
Vadodara Road, Halol,
PANCHMAHALS
GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii ......Respondent
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

<u>APPEARANCE:</u>
Shri A.B.Nawal, Learned Cost Accountant appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) appeared for the Respondent

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

Final Order No. <u>11160/2024</u>

DATE OF HEARING: 16.05.2024
DATE OF DECISION: 04.06.2024

<u>RAMESH NAIR</u>

The issue involved in the present case is that whether the appellant is liable to pay 10%/5% on the value of exempted goods, when infact, the appellant have been reversing the Cenvat Credit proportionately at the time of issue of material for manufacture of exempted product and interest for delay in reversal was also paid.

2. Shri A.B.Nawal, Learned Cost Accountant, appearing on behalf of the appellant at the outset submits that the issue is no longer res-integra that if the proportionate Cenvat Credit is reversed even up to

the stage of Tribunal, the demand under Rule 6(3)(ii) i.e. 10%/ 8%/6% will not be sustainable. He submits the very same issue has been decided in appellant's favour in their own case vide following orders:

1. Final Order No. A/10542/2018 dated 08.03.2018
2. Final Order No.12020-12030/2023 dated 12.09.2023

3. Shri Rajesh Nathan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the reversal made by the appellant has not been verified by the Adjudicating Authority. Therefore, he requests that atleast for verification the matter may be remanded.

4. On careful consideration of the submissions made by the both sides and perusal of record, we find that the issue is no longer res-integra as per the decision of this Tribunal in the appellant's own case as cited supra. The fact is not in dispute that the appellant have been reversing the proportionate Cenvat Credit in terms of Rule 6(3A) of Cenvat Credit Rules, 2004 along with the interest, in case of any delay. Therefore, the appellant is not liable to pay 6%/ 8% / 10% of the value of exempted goods. However, since the lower authority has decided the matter only on the point that the appellant is required to pay 10%/ 8%/ 6% value of exempted goods, the correctness of the reversal and its calculation has never been seen by the Adjudicating Authority. Therefore, only for this limited purpose the matter should go back to the Adjudicating Authority.

5. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order keeping in

mind the observations made in the afore cited two decisions of this Tribunal. The appeal is allowed by way of remand to the Adjudicating Authority.

(*Pronounced in the open court on 04.06.2024*)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi