CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

Excise Appeal No. 10793 of 2017-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-040-16-17 dated 29.11.2016 passed by Principle Commissioner Customs, Excise and Service Tax-Vadodara-II]

Cosmo Films Ltd ...Appellant

Vemardi Road Village Navijithardi Near Inox,
Off N.h. No. 8 Taluka Karjan,
Vadodara, Gujarat

Versus

C.C.E. & S.T.-Vadodara-i ...Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

Appearance:
Present for the Appellant :Shri Ambarish Pandya, Advocate
Present for the Respondent: Shri Ajay Kumar Samota, Superintendent (AR)

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

Final Order No. 11774/2024

DATE OF HEARING: **24/04/2024**
DATE OF DECISION: **13.08.2024**

RAMESH NAIR

The issue involved is whether the appellant is liable to pay 5 % of the value of exempted goods in terms of Rule 6(3) or not in a position where the appellant have reversed the proportionate credit on monthly basis attributed to the exempted goods along with payment of interest.

2. Shri Ambarish Pandey, learned Counsel appearing on behalf of the appellant submits that the issue is no longer res integra. Since, the appellant have reversed the credit before passing the adjudication order and also paid the interest from the date of taking credit till the date of reversal, demand at the rate of 5% of the value of the goods does not sustain.

2.1. He submits that the demand of 5% was made on the allegation that since the appellant have not followed the procedure, they are liable to pay

5%. It is the submission that considering the same fact this Tribunal in number of Judgments held that once proportionate Cenvat Credit has been reversed demand of 5% will not sustain. He placed reliance on the following Judgments:-

- GE Power India Ltd Vs CCE 2022 (11) TMI 861-CESTAT
- A Menarini India Pvt. Ltd vs CST 2022 (10) TMI 695-CESTAT
- Cranes & Structural Engineers Vs CCE 2016 (8) TMI 387-CESTAT
- Emami Ltd Vs CCE 2023 (8) TMI 1232-CESTAT
- P I Industries Vs CCE 2023 (6) TMI 455-CESTAT
- Biochem Pharmaceuticals Industries Ltd Vs CCE 2021 (10) TMI 1285-CESTAT
- CCE Vs Alstom India Ltd 2022 (11) TMI 1070-CESTAT

3. Shri Ajay Kumar Samota, Superintendent (AR) appearing on behalf of Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute that the appellant had taken Cenvat Credit at the time of receipt of input service. However later on monthly basis they have reversed Cenvat Credit attributed to the exempted goods. In the same set of facts This Tribunal has considered this issue time and again and pass the following order :-

- GE Power India Ltd Vs CCE 2022 (11) TMI 861-CESTAT :

  "7. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present matter appellant admittedly reversed the proportionate Cenvat Credit attributable to the trading activity/ exempted service, 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, 2004 therefore demand of huge amount on the total value of the trading activity @ 5%/6%/ 7% 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 or exempted services. 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%/ 6%/7% will automatically and by default be applied. Therefore we do not understand that when the

appellant have categorically agree for the reversal of Cenvat credit by way of opting for option provided under sub-rule (3)(ii), how Revenue can insist that option (3)(1) under Rule 6 should only be followed by the assessee. On this issue, much water was flown as per the judgments cited by the appellant which directly support the case in hand."

In the case of Emami Limited Tribunal has taken the same view, the relevant portion of judgment is reproduced below:-

"In view of the above catena of judgments and many more judgments cited by the Leaned Counsel, the issue is no longer res-Integra as in a case where assessee avails the Cenvat credit on common input service and the same is used for exempted as well as dutiable goods and even at a later stage the assessee reverse the proportionate credit with payment of interest, if there is any delay in reversal of such credit the demand of 10%/6%/5% shall not sustain. Therefore, following the aforesaid judgments we are of the considered view that the appellant are not liable for payment of an amount equal to 10%/6%/5% of the value of the exempted goods. Hence the same is set aside. However, the reversal of the proportionate credit along with interest paid by the appellant is correct and the same is maintained."

The same issue has been considered in the various case laws submitted by the appellant.

In view of the above settled legal position, the issue is no longer res integra.

5. Accordingly, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on **13.08.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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