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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10259 of 2019 - DB

(Arising out of OIA-CCESA-SRT-APPEALS-PS-624-2018-19 dated 30/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Mohit Industries Ltd **........Appellant**
A/601 B, International Trade Centre,
Majura Gate, Ring Road,
Surat, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Surat-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Mukund Chauhan, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12194/2024

DATE OF HEARING: 13.09.2024
DATE OF DECISION: 26.09.2024

RAMESH NAIR

The brief facts of the case are that appellant availed Cenvat credit of duty Rs. 67,21,990/- on shuttle-less Water Jet Looms, Capital Goods, during the period of March 2015 to July 2015, imported vide BOE No. 7842658 dated 29.12.2014, 8035200 dated 19.01.2015 and 8312985 dated 16.12.2015. Appellant was manufacturing Grey Fabrics on imported Capital Goods and cleared at 'Nil" rate of duty under Notification 30/2004-CE dated 09.07.2004, upto july 2016. From the August 2016, appellant started to clear Grey Fabrics, manufactured on imported Capital Goods, under Notification No. 29/2004-CE dated 09.07.2004 on payment of Central Excise duty @ 12.50% Ad-Valoram. From August 2016 onwards, appellant started to avail Notification 29/2004-CE and 30/2004-CE parallely for Grey Fabrics manufactured from imported goods. The case of the department is that since at the time of receipt of capital goods, the appellant's goods were exempted under Notification No. 30/2004-CE. they are not eligible for Cenvat credit on the capital goods.

2. Shri Mukund Chauhan, Learned Counsel appearing on behalf of the appellant submits that as per the Rule 6(4) of Cenvat Credit Rules which was substituted w.e.f. 01.04.2016, the only condition is that in case of manufacturing of excisable goods an assessee is not allowed to take Cenvat credit on capital goods only for two years from the date of receipt of the capital goods. He submits that in the present case at the time of completion of two years the appellant started manufacturing the goods, on the same capital goods, which attracts excise duty. Therefore, as per the amended Rule 6(4) of Cenvat Credit Rules, the appellant has correctly availed the Cenvat credit. This issue in the appellant's own case, vide final order No. A/11732/2019 dated 30.07.2019 decided in their favour by CESTAT Ahemdabad.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the issue in the appellant's own case is squarely covered by this Tribunal's final order No. A/11732/2019 dated 30.07.2019 which is reproduced below:-

> *"The brief facts of the case are that the appellants are engaged in the manufacture of Grey Fabrics. They have received warping machine in the month of November 2014 on which Cenvat Credit was availed. From November 2014 up to July, 2016 the appellant was availing the exemption*

notification 30/2004-CE dated 09/07/2004. From August, 2016 they started paying duty by opting for the concessional exemption notification 29/2004-CE dated 09/07/2004. The case of the department is that at the time of receipt and installation of machines, the appellant was availing exemption notification no. 30/2004-CE. As per Rule 6 (4) of the Cenvat Credit Rules, 2004 if the capital goods is used exclusively for manufacture of exempted goods, the Cenvat Credit is not admissible. The contention of the department is that since at the time of receipt of capital goods, the appellant was manufacturing exclusively exempted goods with the help of the said warping machine, they are barred from availing the Cenvat Credit on such capital goods.

2. Shri Mukund Chouhan, Ld. Counsel appearing on behalf of the appellant submits that even though the appellant was availing the notification no. 30/2004-CE, but the goods manufactured per se were not exempted. He also submits that they started clearing the same goods under notification 29/2004-CE from August 2016. Therefore, it cannot be said that the capital goods was used exclusively for manufacture of exempted goods. He submits that this issue, particularly related to notification no. 29/2004-CE and 30/2004-CE, has been considered in various following judgment of this Tribunal/High Court:

1. *Commr. of C.Ex., Madurai vs. Eastman Spinning Mills (P) Ltd. 2011(271) E.L.T. 256 (Tri- Chennai)*
2. *S.T. Cottex Exports (P) Ltd. vs. Commr of C.Ex. Ludhiana 2010 (261) E.L.T. 807 (Tri- Del.)*
3. *Sel Manufacturing Co. Ltd. vs. Commr. of C.Ex., Chandigarh 2016 (341) E.L.T. 308 (Tri.- Chan.)*
4. *Modern Petrofils Dty Division vs. Commr. of Ex. & S.T., Vadodara 2014 (313) E.L.T. 545 (Tri- Ahmd.)*
5. *Oswal Woolen Mills. Ltd. Vs. Commr. of C.Ex. Ludhiana 2012 (284) E.L.T. 240 (Tri. Del.)*
6. *M/s Sanskar Processors Ltd. vs, CCE, Surat-I vide order no. WZB/AHD/2017 dated 30.11.2017.*
7. *CCE, Surat-I vs. M/s Sanskar Processors Ltd. in the High Court of Gujarat in Tax Appeal no. 1260 of 2008.*
8. *PSL Ltd. Vs. CCE, Vishakhapatnam-I 2007 (214) E.L.T. 238 (Tri. Bang.)*

He alternatively submits that Rule 6 was substituted vide notification no. 13/16-CE (N.T.) dated 01/03/2016. As per the substituted Rule, the bar on allowing the credit on receipt of capital goods is only on the condition and if the capital good is used for manufacture of exclusively exempted goods for a period of two years. He submits that as per the facts of the present case, though the capital goods was received in November 2014, but from August, 2016 they started manufacturing the dutiable goods which were cleared under notification no. 29/2004-CE. Therefore, the said capital goods was not used continuously for two years for manufacture of exempted goods. Therefore, the bar provided under Rule 6 (4) of Cenvat Credit Rules is not applicable in their case.

3. Shri S.N. Gohil, Ld. Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that after receipt of capital goods it was used for manufacture of exclusively *exempted goods. Therefore as per Rule 6(4) prevailing at the relevant time, the appellant was not entitled for the CENVAT Credit.*

4. I have heard both sides and perused the records. I find that though Rule 6(4) was amended by notification 13/2016- CE (N.T.) dated 01/03/2016 but the amendment is by way of substitution of Rule 6 (4). The substituted rule 6 (4) is given below:

"5.?In rule 6 of the said rules,-

(a) for sub-rule (1), the following......

(b) .....

(g) for sub-rule (4), the following sub-rule shall be substituted, namely :-

"(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year :

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods."

(h) in sub-rule (7), after the words "when a service is exported", the words "or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall be inserted with effect from 1st March, 2016."

As per the above substituted Rule, it is clear that the bar on availing the credit in respect of capital goods used in manufacture of exempted goods shall apply only if the capital goods are used for two years from the date of installation/commencement of production. As per the facts of the present case, though the appellant received and installed the capital good in their running unit in November, 2014 but before completion of two years, in August, 2016 the capital good was used for manufacture of goods which were cleared on payment of duty, availing the exemption notification 29/2004-CE. Therefore, the capital goods was not used continuously for two years for manufacture of exclusively exempted goods. Since the amendment is by way of substitution, it will be applicable from the retrospective effect. This view is supported by decisions as follows:

1. *Zile Singh Vs. State of Haryana & ors. 2004 (10) TMI 553 (SC)*
2. *Govt. of India vs. Indian Tobacco Co. 2005 (8) TMI 113 (SC)*

It is also observed that the Tribunal in the cited judgments under the same set of facts and dispute related to notifications 29/2004-CE and 30/2004-CE held that even though initially "Nil" rate of duty exemption under notification 30/2004-CE has been availed and subsequently, *notification no. 29/2004-CE availed and paid the duty, the Cenvat Credit on capital goods is admissible.*

5. As per my above discussion, I am of the view that Cenvat Credit on the capital goods is admissible. Accordingly, the impugned order is set aside, appeal is allowed. "

From above decision, it can be seen that the facts of the present case are identical to the fact of the above case in the appellant's own case. Therefore, ratio of the above decision is directly applicable. Accordingly, the appellant is entitled for the Cenvat credit on capital goods.

5. The impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 26.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha