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

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 10265 of 2020

[Arising out of OIA-RAJ-EXCUS-000-APP-021-2020 dated 30/01/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

MAHALAXMI EXTRUSION .....**Appellant**
Gidc, Special Shed No. 431,
Shankar Tekri Udhyognagar
Jamnagar, Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT .....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:
Shri Paresh Sheth, Advocate for the Appellant
Shri. R P Parekh, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11024 /2022

DATE OF HEARING: 22.08.2022
DATE OF DECISION: 26.08.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacturing of Brass Rods classifiable under chapter 74 and was registered with Central Excise Department. During the course of statutory audit by the officers of the CERA, Ahmedabad it was observed that the appellant is engaged in the activity of manufacture of its own, manufacture on job work basis, clearance of inputs in as such condition and trading of goods on High Seas Basis. Department's contention is that all the said three activities falls under the category of exempted service. Hence, the appellant are required to pay an amount of 7% in terms of Rules 6 of Cenvat Credit Rules, 2004, on the ground that the appellant is using common input service attributed to all the activities. The Adjudicating Authority confirmed demand

and the Learned Commissioner (Appeals) has upheld the same vide the impugned order. Therefore, the appellant filed the present appeal.

2. Shri Paresh Sheth, Learned Counsel appearing on behalf of the appellant submits that as regard the activity of manufacture on job work basis though the same is exempted under notification No. 214/86-CE dated 25.03.1986, but the credit in respect of input and input service used in manufacture of job work goods is admissible. He relied upon the following judgments:

- Sterlite Industries (l) Ltd. Reported in 2005-183-ELT-353
  Confirmed By Bombay H.C. reported in 200-244-ELT-A89
- Svizera Labs Pvt Ltd. Reported in 2020-374-ELT-595(Tri Mumbai)

As regard the traded goods on High Seas Basis, he submits that for the same period and on the same issue our statutory record were audited by the audit team of the department on 28 & 29.07.2017 and had raised the issue of applicability of Rule 6 on trading turnover and on raising objection the amount of Rs. 5,857/- as directed by the audited party was paid and hence considering the said amount the demand raised is liable to be set aside. In this regard he placed reliance on this CESTAT decision in the case of Optel Ceramic Pvt. Ltd. Final Order No. A/12279/2017 dated 05.09.2017. He further submits that since the department had complete knowledge of appellant’s activity of Trading of goods on High Seas Basis, demand is clearly barred by limitation. On the issue of time bar, he placed reliance on the following judgments:

- Pragathi Concrete Products (P) Ltd,.-2015-322-ELT-819-SC
- MTZ Polyfilms Ltd. -2010-256-ELT-539-Guj H C

- Agro Pack 2009-240-ELT-135-Trib-Mum
- Bharat Aluminium Co. ltd.-2016-344-ELT-1153-Chattisgarh-HC
- Compark Services P Ltd.- 2019-24-G.S.T.L- Tri-All.

As regard the demand in respect of removal of input as such. He submits that since the input was cleared as such on payment of duty, it cannot be said that the Trading of said input is exempted activity. Therefore, Rule 6 of Cenvat Credit Rules would not be applicable. He placed reliance on this CESTAT decision in the case of Mahesh Twisto Tech Ltd. Final Order No. A/13504/2017 dated 17.11.2017.

3. Shri R P Parekh, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submissions made by both sides and perused the records. I find that the demand was raised in respect of three types of removal of goods. Considering the same as exempted services which are as follows:

(1) Manufacture of goods on job work basis

(2) Trading of Goods on High Seas Basis

(3) Trading of Goods by way of removal of input as such on payment of duty

As regard the first issue of goods on job work basis, I find that the appellant have manufactured goods on Job work Basis in terms of Notification No.214/86-CE dated 25.03.1986. In terms of Rule 3 of Cenvat Credit rules, 2004, it is specifically provided that input and input service used in the manufacture of job work goods under Notification No. 214/86-CE, the credit is admissible. In view of basis explicit provision credit of input or input service used in relation to job work goods cannot be denied. Further the issue has been considered in the case of Sterlite Industries Ltd. and Svizera Labs Pvt Ltd.,(supra) wherein the credit of input/input services used in job work goods under Notification No. 214/86- CE credit was allowed. Therefore, the demand related to manufacture of job work goods is clearly not sustainable.

As regard the Trading of Goods on High Seas Basis, this issue has been raised by the auditors and auditors accepting that the proportionate credit in respect of common input service attributed to Trading of Goods on High Seas Basis should be reversed and the appellant complying with the direction of CERA Audit, they have reversed the proportionate credit of Rs. 5,857/-. In this peculiar fact no further demand invoking Rule 6 can be raised. Moreover, the activity of Trading of Goods on High Seas Basis was clearly in the knowledge of the department. Therefore, no suppression of fact can be alleged against the appellant. Hence, the demand is also not sustainable on the ground of time bar. The appellant have relied upon the decision in the case of Optel Ceramic Pvt. Ltd. (supra) wherein this Tribunal has passed the following order:

> *"Heard both sides. This appeal is filed by the Revenue against the Order-in-Appeal No. 248-COMMR (A)/2014-15 dated 31.12.2014 passed by the Commissioner (Appeals), Central Excise, Rajkot, whereunder the ld. Commissioner (Appeals) observed that since the Respondent had reversed the proportionate credit attributable to the exempted product, therefore, the demand of the amount for non-maintenance of separate records for utlization of common inputs for exempted as well as dutiable product is not sustainable. While arriving at the said conclusion, the ld. Commissioner (Appeals) relied the judgment of this Tribunal in the case of Swiss ParenteralsPvt.Ltd. vs. C.C.E & S.T. Ahmedabad 2014 (308) ELT 81 (Tri-Ahmd.).*
>
> *2. I find that the Respondent had reversed the proportionate credit on the inputs attributable to the manufacture of exempted products during the relevant period along with Interest. Therefore, In view of the judgment of this Tribunal in the case of Swiss Parenterals Pvt. Ltd (supra) and on going through the said order, I do not find any discrepancy in the Impugned order. Accordingly, the impugned order is*

> *upheld and the Appeal filed by the Revenue being devoid of merit is dismissed. CO filed by the Respondent is also disposed off."*

On going through the above decision it can be seen that the appellant have reversed the proportionate credit attributed to the exempted goods, hence the demand under Rule 6 cannot be sustained. The judgments cited by the appellant on the issue of limitation also clearly support their case.

On the third issue i.e. Trading of goods by way of removal of input as such, I find that undisputedly the removal of input as such was made on payment of duty in terms of Rule 3(5) of Cenvat Credit Rules, 2004. As per this provision for all the purposes the removal of goods is treated as removal of goods of payment of duty. In this clear position by any stretch of imagination, it cannot be said that the goods cleared on payment duty is exempted goods or service. Therefore, there is no application of Rule 6(3) for payment of an amount as prescribed therein. This issue was considered by this Tribunal in the case of Mahesh Twisto Tech Ltd (supra), wherein following order was passed by the Tribunal:

> *"Heard both sides. This Appeal is filed against the Order-In Appeal No. BHV-EXCUS-000-APP-028-2017-18 deted 4.9.2017 passed by the Commissioner (Appeals), Central GST and Excise, Rajkot.*
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> *2. Briefly stated the facts of the case are that the Appellants are engaged in the manufacture of various types of Twisting machines falling under Chapter 84 of CETA, 1985. During the relevant period, the Appellant had undertaken manufacturing as well as trading activity. Alleging that CENVAT credit availed on input services used for trading activity not admissible, demand notice was issued for recovery of 5% of the value of the goods traded. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the Appellant filed Appeal before the ld.Commissioner (Appeals), who in turn, partly allowed their Appeal to the extent of deduction of clearance value of goods exported and remanded the matter for re-quantification.*
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> *3. Ld. Advocate Shri P.V.Sheth for the Appellant submits that the Ld. Commissioner (Appeals) has not allowed deduction of the value of the goods cleared 'as such on payment of duty, in addition to export sale from the total turnover of the trading*

> *activity. It is his contention that the input cleared following the procedure laid down under Rule 3(5) of the CCR, 2004, the value of such goods should be excluded from the total value of the trading goods in computing the amount under Rule 6(3) of CCR, 2004. In support, the ld. Advocate referred to the decisions of this Tribunal in the case of C.C.E., Ghaziabad vs. UP Telelinks2015 (329) ELT 888 (Tri-Del.) and C.C.E. & S.T., Ghaziabad vs. Mahaveer Cylinders Ltd. -2016 (34) ELT 361 (Tri-All.).*
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> *4. Ld. A.R. for the Revenue reiterated the finding of the Ld Commissioner (Appeals).*
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> *5. I find that the ld. Commissioner (Appeals) has remanded the matter to re-compute the amount of 6% under Rule 6(3) of CCR, 2004 after excluding the export sales. It is the grievance of the Appellant that the clearance of inputs as such under Rule 3(5) of the CCR, 2004 was not excluded by the ld Commissioner (Appeals) even though they argued the same before him. I find that in view of the judgments of this Tribunal in the case of UP Telelinks (supra) and Mahaveer Cylinders Ltd. (supra), the value of as such clearances of inputs cannot be taken into account in computing 6% of the value of exempted goods i.e. the goods traded by the Assessee. In the result, the impugned order is modified and clearance of goods as such be also excluded while computing the liability of 6% payable on the value of goods traded. The Appeal is allowed by way of remand."*

From the above decision it can be seen that the very same issue has been considered by this Tribunal and on the removal of input as such on payment of duty, it was held that the same should not be included for computing 6% of the value of exempted goods and accordingly assessee's appeal was allowed.

5. As per my above discussion and finding the demand raised in terms of Rule 6 of Cenvat Credit Rules, 2004 by both the Lower Authorities is not sustainable. Accordingly, the impugned order is set aside appeal is allowed.

(Pronounced in the open Court on 26.08.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

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