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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10021 of 2022 – DB

(Arising out of OIO-RAJ-EXCUS-000-COM-10-18-2021-22 dated 30/09/2021 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

NAYARA ENERGY LTD **........Appellant**
Formerly Known As Essar Oil Ltd Pb No 24
Head Post Office Khambhalia
Devbhumi Dwarka
Gujarat

VERSUS

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

APPEARANCE:
Ms. Dimple Gohil Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 12379/2024

DATE OF HEARING: 24.09.2024
DATE OF DECISION: 16.10.2024

RAMESH NAIR

The appellant are engaged in the manufacture business of dutiable goods namely Motor Spirit, High Speed Diesel, Naptha, Petroleum coke, bitumen etc. Further, Superior Kerosene Oil (SKO) and Liquefied Petroleum Gas (LPG) necessarily arose in the manufacturing process as a technological necessity. The SKO and LPG which are cleared for sale under the public distribution system (PDS) are exempt from the levy of the excise duty. The appellant under a mistaken belief that the same were manufactured goods reversed proportionate Cenvat credit on common input and input services used in the manufacturing process in compliance with the provisions of Rule 6 of Cenvat Credit Rules, 2004. The appellant did not avail any Cenvat credit of duty/ tax paid on input and input services exclusively used by it in respect of generation LPG and SKO. The dispute in the present case pertains to reversal of Cenvat credit under Rule 6 (3) read with Rule 6 (3A) of Cenvat Credit Rules, 2004 i.e. whether such reversal ought to be computed on total credit or common credit. Rule 6 (3) places an obligation on the assessee for reversal of Cenvat credit on inputs and input services used for manufacturing of exempted goods. The case of the appellant is that the respondent has wrongly interpreted Rule 6 (3) and Rule 6 (3A) of Cenvat Credit Rules, in such a way wherein he has computed the reversal on total Cenvat credit availed on inputs and input services pertaining to dutiable as well as exempted supplies and not on the common credit of input and input services used for manufacture of both dutiable and exempted good.

2. Ms. Dimple Gohil, Learned Counsel appearing on behalf of the Appellant submitted a synopsis and reiterated the same. She further submits that the issue in the appellant's own case is no more res-integra as the same has been decided vide Final Order No. A/10642/2024 dated 20.03.2024. She placed reliance on the following judgments:-

- Circular No. 334/8/2016-TRU dated 29.02.2016
- Reliance Industries Ltd. [2019 (28) GSTL 96 (Tri.- Ahmd.)]
- Reliance Industries Ltd. [2020-TIOL-1388-CESTAT-MUM]
- Reliance Industries Ltd. [2020-TIOL-879-HC-AHM-CX] -
- IBM India Pvt. Ltd., Final Order No.20300/2015 dated 11.02.2015 passed in Appeal No.ST/20741/2014
- Dell International Services India Pvt. Ltd., Final Order No.20369/2020 dated 18.02.2020 passed in Service Tax Appeal No.965 of 2011

- M/s. Dalmia Cement (Bharat) Ltd. v. Commissioner of CGST and Central Excise, Trichirappalli [2023 (9) TMI 1136 (Tri-Chennai)]
- E-Connect Solutions (P) Ltd. [2021 (376) E.L.T. 678 (Tri. - Del.]
- Lotte India Corporation Ltd. [MANU/CC/0007/2020]
- Molex (India) Pvt. Ltd. [MANU/CB/0212/2019]
- National Steel & Agro Industries Ltd. [MANU/CE/0056/2021Home Ashok Leyland Ltd. [2007 (210) ELT 178 (SC)]
- Foods, Fats and Fertilizers Ltd. v. CCE [2011 (22) STR 484 (T))
- Burn Standard Co. Ltd. [2010 (262) ELT 786 (T)]
- Burn Standard Co. Ltd. [2013 (295) ELT 671 (Mad.).)
- Indian Tobacco Association, 2005 (187) ELT 162 (SC)
- Reliance Industries Limited [2022 (382) E.L.T. 53 (Guj.)]
- Reliance Industries Ltd. [2023-TIOL-1130-HC-AHM-CX]
- Reliance Industries Ltd. [Excise Appeal No. 89137 of 2013, Final order no. A/86163/2023 dated 19.07.2023)
- Reliance Industries Ltd. [Excise Appeal No. 11697 of 2017, Final order no. A/12628-12630/2021 dated 20.12.2021]
- Reliance Industries Ltd. [Excise Appeal No. 1498 of 2012, Final order no. A/85909/2022 dated 26.09.2022)
- Reliance Industries Ltd. [Excise Appeal No. 532 of 2012, Final order no. 85471-85472/2023 dated 14.03.2023]
- Sterling Gelatin [2015 (320) E.L.T. A343 (S.C.)]
- Hindustan Zinc Ltd. [2014 (303) E.L.T. 321 (S.C.)]

3. Shri Rajesh Nathan, Learned Assistant Commissioner appearing on behalf of the 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 the limited issue to be decided in the present case is that for the purpose of reversal of proportionate Cenvat credit attributed to the exempted goods for the purpose of formula for calculation of such amount whether total Cenvat credit of all the inputs and input service is to be taken or only total Cenvat credit of common input and input service used in dutiable and exempted goods has to be taken. On this issue due to serious confusion that whether the total Cenvat credit has to be taken or only total Cenvat credit of common input and input service used in dutiable and exempted goods has to be taken for the purpose of formula under Rule 6 (3A). An amendment was brought by substitution vide Notification No. 13/2016-CE(NT) dated 01.03.2016 whereby it was clarified that the total Cenvat credit means the credit availed on common inputs and input services used in the manufacture of dutiable as well as exempted goods.

4.2 Considering the above changes and interpretation of the term "total cenvat credit" for the purpose of Rule 6 (3A) this Tribunal in the appellant's own case passed the Final Order No. A/10642/2024 dated 20.03.2024. The said order is extracted below:-

> *"4. The issue that arises for consideration in this appeal is regarding the manner of computation of proportionate reversal of credit determined under Rule 6(3A) of the Rules. The contention of the department is that for the purpose of reversal, the "Total Cenvat Credit Taken on Input and Input services" should be considered while the contention of the appellant is that "Total Cenvat credit taken on Input and Input services" should include only common Input and Input services used in exempted manufactured goods.*
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> *4.1. In order to appreciate contentions, it will be appropriate to refer to the relevant provisions of Rule 6 of the Rules and it is as follows :*
>
>> ***"Rule 6. Obligation of a manufacturer or producer of final products and a provider of taxable service. -*** *(1) The CENVAT credit shall not be allowed on such quantity of input used in or in*

relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacturer of exempted goods and their clearance upto the place of removal or for provision of exempted services except in the circumstances mentioned in sub-rule (2) :

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

*(2) *********

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely :-

(i) pay an amount equal to six per cent of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be six per cent. of the value so exempted.

Explanation I. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II. - For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the

Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or output services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay provisionally, for every month, -

(i) the amount equivalent to CENVAT credit attributable to inputs used in or relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month."

4.2 Rule 6(1) of the Rules curtails the manufacturer from availing Cenvat credit on input and input services used for exempted goods. This clearly means that credit is allowed to be taken only on Input and Input services pertaining to dutiable goods. The dispute in the appeal is regarding the interpretation of the term total Cenvat credit provided in the formula in Rule 6(3A)(b)(ii). It would be clear from a conjoint reading of sub-rules 6(1), (2) and (3) of Rule 6 that the total Cenvat credit for the purpose of formula under Rule 6(3A) is only total Cenvat credit of common input and input service and cannot include Cenvat credit on input and input service exclusively used for the manufacture of dutiable goods. If the interpretation of the Revenue is accepted, then the Cenvat credit of part of Input and Input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of the Rule of Cenvat Credit Rules, 2004.

4.3 We noticed that an amendment made in Rule 6(3A) by Notification No. 13/2016-C.E. (N.T.), dated 1-3-2016. The amended sub-rule (3A) of Rule 6 of Cenvat Credit Rules, 2004 is reproduced below:-

"Sub-rule (3A) as per Notification No. 13/2016-C.E. (N.T.), dated 1 Mar., 2016

(d) for sub-rule (3A), the following sub-rule shall be substituted, namely :-

"(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as, -

$C = T - (A + B);$

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution;

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

$D = (E/F) \times C;$

where E is the sum total of -

(a) value of exempted services provided; and

(b) value of exempted goods removed, during the preceding financial year;

where F is the sum total of -

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed, during the preceding financial year :

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty per cent. of the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where, -

G = C - D.

Explanation. - For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit;

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen per cent. per annum."

4.4 From the above it can be seen that when anomaly was noticed, the Government has substituted the sub-rule (3A). The legislators very consciously substituted the Rule with intention to give a clarificatory nature to the provision of sub-rule (3A) so as to make it applicable retrospectively. It was all along not the intention of the Government to deny Cenvat credit on the input/input service even though used in the dutiable goods. Keeping the said view in mind, the substitution in sub-rule (3A) of Rule 6 was made. Therefore, the substituted provision of sub-rule (3A) shall have retrospective effect being clarificatory. In the case of GOI v. Indian Tobacco Association 2005 (187) E.L.T. 162 (S.C.) (supra), the Hon'ble Supreme Court held that "the word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague". By the reason of the amendment, no substantive right has been taken away nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby." As per this interpretation of the Hon'ble Supreme Court, the sub-rule (3A) being substitution shall have a retrospective effect and will be applicable for all time since when the Rule was enacted. Therefore, for this reason also, for the purpose of calculation of Cenvat credit reversal, in the formula, total

Cenvat credit shall mean credit of only common input and input service and not of input and input service exclusively used for the manufacture of dutiable product on which the Cenvat credit is eligible to the appellant in its entirety.

4.5 We also find that the as regard to availment of Cenvat credit on inputs and input services used for manufacture of LPG & SKO, the issue is no more res integra in view of the Hon'ble High Court of Gujarat decision in the case of M/s Reliance Industries Ltd. 2022(382)ELT 53 (Guj), wherein the Hon'ble High Court has held that LPG is a by product generated in the process of refining and no reversal is required in this matter. We also find that the said disputed issue are also decided in favour of the assessee in the matter of Reliance Industries Ltd. [2023-TIOL-1130-HC-AHM-CX] , Reliance Industries Ltd. Excise Appeal No. 89137 of 2013, Final Order No. A/86163/2023 dtd. 19.07.2023 , Reliance Industries Ltd. Excise Appeal No. 11697 of 2017, Final Order No. A/12628-12630/2021 dtd. 20.12.2021, Reliance Industries Ltd. Excise Appeal No. 1498 of 2012, Final Order No. A/85909/2022 dtd. 26.09.2022 , Reliance Industries Ltd. Excise Appeal No. 532 of 2012, Final Order No. 85471-85472/ 2023 dtd. 14.03.2023 , Sterling Gelatin [2015(320)ELT A343(SC)] and Hindustan Zinc Ltd. [2014(303)ELT 321 (SC).

4.6 The issue in the above case and the case in hand is absolutely identical, therefore, following the above decisions, we do not find any merits in the impugned order. Since we decided the issue in respect of above by-products in above terms, we do no incline to deal with issues of what value to be considered for reversal.

4.7 Further, since we decide the matter on merits, we do not incline to deal with the issues of Limitation argued by the appellant and the same are kept open.

5. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief ,in any, as per law."

4.3 In view of the above order the issue in hand is no more res-integra as for the purpose of the correct calculation of the proportionate Cenvat credit for reversal under Rule 6 (3) in terms of Rule 6 (3A) of Cenvat Credit Rules, 2004 the total Cenvat credit means only the total Cenvat credit of common input and input service which is used for dutiable as well as exempted goods. As per the submission of the appellant they have correctly calculated and reversed the credit as observed by us.

However, the revenue is at liberty to verify the correctness of the credit reversed by the appellant.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 16.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha