

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11559 of 2019

(Arising out of OIO-SUR-EXCUS-000-COM-01-19-20 dated 28/05/2019 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Marudhar Spinning Mills Pvt Ltd

.....Appellant

Office No. 401, Reegus Business Centre, New City Light Road, Bhartana
Surat, Gujarat

VERSUS

C.C.E. & S.T.-SURAT-I

.....Respondent

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

WITH

Excise Appeal No.11763 of 2019

(Arising out of OIO-SUR-EXCUS-000-COM-01-19-20 dated 28/05/2019 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

C.C.E. & S.T.-SURAT-I

.....Appellant

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

VERSUS

Marudhar Spinning Mills Pvt Ltd

.....Respondent

Office No. 401, Reegus Business Centre, New City Light Road, Bhartana
Surat, Gujarat

APPEARANCE:

Shri Goyal Rathi, Chartered Accountant for the Appellant

Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 11210-11211 /2022

DATE OF HEARING: 05.07.2022

DATE OF DECISION: 17.10.2022

RAMESH NAIR

Above stated two appeals are taken together for decision since both of them are arising out of the same impugned Order-in-Original No. SUR-EXCUS-000-COM-01-19-20 dated 28.05.2019.

1.1 The brief facts of the case are that M/s. Marudhar Spinning Mills Pvt. Ltd. (M/s MSMPL) Surat, was engaged in the manufacture of excisable goods polyester yarn falling under heading No. 55.09 of the First Schedule to the Central Excise Tariff Act, 1985 during the relevant period. In the course of scrutiny of records of M/s MSMPL, it was observed by the department that they had made domestic clearances of finished goods without payment of Central Excise Duty in terms of Notification No. 30/2004-CE dated 09.07.2004 during the period April 2004 to March 2007. M/s MSMPL simultaneously cleared identical goods on payment of applicable Central Excise Duty for Exports. M/s MSMPL was maintaining separate records for the two categories of goods i.e. exempted & duty paid as mandated in Rule 6 of Cenvat Credit Rules 2004. On scrutiny of ER-1 returns for the Month of March 2017, it appears that they had availed consolidated cenvat credit by a single entry of all the inputs used in the manufacture of Finished goods which were cleared without payment of duty under the Notification No. 30/2004-CE dated 09.07.2004 during the period April 2016 to March 2017. It appears that in respect of the goods which were cleared without payment of duty under Notification No. 30/2004-CE they had availed the consolidated Cenvat Credit by single entry for the period April 2016 to March 2017 and reversed an amount equal to 6% of the Value of such exempted goods as per the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 by single entry for the period April 2016 to March 2017. It also appears that they availed cenvat credit on exempted goods on monthly basis and reversed an amount equal to 6% of the value of the exempted finished goods on monthly basis for the period April 2017 to June 2017.

1.2 A show cause notice was served on M/s MSMPL for denial of benefit of Notification No. 30/2004-CE dated 09.07.2004, for demand of central excise duty of Rs. 6,96,22,836/- on value of goods cleared during the period April 2016 to June 2017 along with interest and penalty and for amount of Rs. 3,34,18,901/- @ 6% already reversed under Rule 6(3) be declared invalid. In Adjudication process, the adjudicating authority vide its impugned order dated 30-8-2006 by denying the benefit of Notification No. 30/2004-CE dated 09.07.2004 confirmed the demand of Central Excise Duty amounting to Rs. 6,96,22,836/- along with interest and penalty and ordered for the appropriation of cenvat credit of Rs. 3,52,83,382/- against the determined duty liability which was reversed by the appellant. Being aggrieved with

impugned order both department and M/s MSMPL filed the present Appeals before us.

02. Shri Goyal Rathi, learned Chartered Accountant appearing on behalf of the Appellant submits that the show cause notice issued by the department itself is bad-in-law as it is issued without following the procedure mentioned in Master Circular No. 1053/02/2017-CX. Dated 10.03.2017, therefore, the demand so confirmed based on impugned show cause notice is also bad-in-law and deserves to be set aside on this ground alone.

2.1 He also submits that the Appellant had availed consolidated cenvat credit by a single entry on all the inputs used in manufacture of finished goods which were cleared without payment of duty under Notification No. 30/2004-CE dated 09.07.2004. This information about the facts of the case is incomplete and is only one sided. The impugned show cause notice nowhere mentions as to why appellant who was not availing the cenvat credit had availed the cenvat credit for the entire year in the month of March 2017 by a single entry. The SCN is hiding the facts of the case which are very important for arriving at the allegation framed against the Appellant. Appellant was not claiming the credit upto February 2017, however the Jurisdictional Range officer vide letter dated 28.03.2017 asked the appellant to reverse the credit @6% as per the Rule 6 of Cenvat Credit Rules 2004. The entire case was started by the said letter only. Thereafter only the Appellant started availing the credit on all the inputs and reversed CENVAT credit @ 6% of value of exempted goods. In the impugned order Learned Adjudicating authority also ignored the said facts. Therefore, non-mentioning of complete facts in the SCN and no finding been given on the contentions raised by the Appellant clearly shows that the authorities have violated the principles of natural justice. He placed reliance on the judgment in the case of Mars Shipping Services Vs. Commr. Of Cus., Chennai 2015(322) ELT 865.

2.2 He also submits that the appellant has already reversed the excess CENVAT credit balance arose due to Cenvat Credit taken in relation to exempted goods. Thus, the demand of duty confirmed may kindly be set aside. In the instant case, the departmental authorities have taken two different view i.e assessments on the same issue for the same period, as earlier the Jurisdictional Range Officer had asked the Appellant to reverse 6% on the value of exempted goods thereafter, the Learned Adjudicating

authority has demanded Central Excise Duty by denying the exemption. The Learned Adjudicating authority cannot re-open such assessment in a different manner.

2.3 Without prejudice, he also submits that the denial of benefit availed by the appellant of Notification No. 30/2004-CE dated 09.07.2004 is unwarranted and is inconsistent with Rule 6 of Cenvat Credit Rules, 2004, as the Appellant has correctly reversed the credit by paying an amount of 6% of the exempted goods in view of Rule 6 of the Cenvat Credit Rules, 2004. Therefore, the benefit as claimed by the appellant may kindly be allowed. The allegation of revenue is contrary to the specific provisions of Rule 6(3D) of Cenvat Credit Rules, 2004 as it is a well settled law that once reversal of credit amount is done it tantamount to non availment of Cenvat Credit. The Board had issued a circular No. 845/03/2007-CX, dated 01.02.2007 which was further amended vide Circular No. 858/16/2017-CX dated 08.11.2017, in the said circular it was explicitly mentioned that textile articles falling under Chapter 50 to 63 of the Central Excise Tariff which are covered under conditional exemption Notification No. 30/2004 -C.E. dated 09.07.2004 would be covered under Rule 6 of the Cenvat Credit Rules 2004. He placed reliance on the following judgements:-

- CHANDRAPUR MAGNET WIRES (P) LTD. VS. COLLECTOR OF C.EX., NAGPUR – 1996 (81) ELT 3 (SC).
- COMMISSIONER OF CENTRAL EXCISE VS. ASHIMA DYECOT LTD. – 2009(240)ELT A41(SC)
- GLOBAL WOOL ALLIANCE PVT. LTD. VS. COMMISSIONER OF CENTRAL EXCISE – 2017(358) ELT 1218 (TRI. MUMBAI)
- SPENTEX INDUSTRIES LTD. VS. CCE – 2016(338)ELT 614(T)
- M/S. VINEET POLYFABPVT. LTD. VS. CCE, SURAT-I FINAL ORDER NO. A/11109/2019 DATED 11.07.2019.

2.4 He also submits that on the facts and circumstance of the case and in law, the demand so confirmed by invoking the provisions of Section 11A(4) is unwarranted as the Cenvat Credit has been taken by the Appellant only on the instance of the letter issued by Jurisdictional Range officer and not on its own account. Therefore, the allegation of suppression of facts, wilful misstatement or contravention of provisions of Central Excise Act and Rules

made thereunder is without authority of law. He placed reliance on the following judgments:-

- HINDUSTAN STEEL LTD. VS. THE STATE OF ORISSA – AIR 1970(SC) 253
- KELLNER PHARMACEUTICALS LTD. VS. CCE- 1985 (20) ELT 80
- COMMISSIONER OF CENTRAL EXCISE VS. ALUPLEX INDIA PVT. LTD. (2018) TAXCORP (IDT) 112478 (CESTAT -MUMBAI)
- COMMISSIONER OF CENTRAL EXCISE VS. THERMAX LTD. (2017) TAXCORP (IDT) 110316 (CESTAT -MUMBAI)

03. On the other hand, Shri Dinesh Prithiani, learned Assistant Commissioner (AR) for the Revenue as regard the appeal filed by the department reiterated the grounds of Appeal and in the matter of Appeal filed by M/s MSMPL submits that they are not entitled to the benefit of Notification No 30/2004-CE dated 09.07.2004 as the condition of Notification No. 30/2004-CE was that no credit of excise duty on inputs has been taken by the manufacturer of such goods under the provisions of Cenvat Credit Rules 2004. It is a trite law the condition of the exemption Notification should be strictly interpreted and followed. It is fact on record that the they took cenvat credit on inputs @12.5% on 31.03.2017 and on the same day, they reversed credit @6% under Rule 6 of Cenvat Credit Rules 2004. This is nothing but to enrich themselves by taking excess credit to the extent of 6.5%. He placed reliance on following judgments:-

- DILIPKUMAR& CO. – 2018(361)ELT 577 (SC)
- GNFC LTD. – 2009(240)ELT 661 (SC)

3.1 He also submits that the Cenvat Credit Rules, 2004 is subordinate legislation. Section 5A is a provisions of Parent Act. Section 5A nowhere state that if Rule 6(3) complied with in terms of payment of 6% of exempt value, condition of Notification is deemed to be satisfied. Even Notification No. 30/2004-CE nowhere provides manner in which condition of Notification can be used to be satisfied qua non-availment of credit. In any case Rule 6(3D) of Cenvat Credit Rules 2004 creates an embargo to consider 6% payment at par with not-availing credit per se, in the context of specific requirement of exemption Notification, which has to be decided in terms of

language of Notification and not based on CCR, 2004. He placed reliance on following decisions:-

- ARVIND MILLS LTD. – 2009(240)ELT 613 (TRI. AHMD.)
- YHELLO MINERAL WATER PVT. LTD. – 2004 (163) ELT 55 (TRI. DEL)
- DILIPCHHABRIA DESIGNS PVT. LTD. – 2015 (323) ELT 565 (BOM.)
- SPENTEX INDUSTRIES LTD. 2010 (253) ELT 225

3.2 He also submits that even subsequent reversal of the credit in Feb. 2019 as contended by them will not make them eligible for the exemption Notification No. 30/2004 -CE dated 09.07.2004.

04. We have Heard both the sides and considered the submissions from both the sides and perused the record. Short issue required to be decided in this matter is as to whether such reversal of credit, either by payment of 6% in terms of Rule 6 or by debiting the same from the Cenvat credit account, would result to satisfying the condition of notification No. 30/2004-CE in question. The condition of the notification is that no credit should have been availed in respect of inputs used in the manufacture of such goods. We find that the issue is no more *res integra* and stands settled by Hon'ble Supreme Court in the case of *Chandrapur Magnet Wires Ltd. v. C.C.E.* - [1996 \(81\) E.L.T. 3](#) (S.C.). It stands held that when credit so availed is subsequently reversed, the situation would be as if no credit was ever availed. Reference is made to the following decisions:-

- ASHA RUBBER P. LTD. V. CCE, AHMEDABAD-II - [2009 \(233\) E.L.T. 120](#) (TRI.-AHMD.)
- LIFELONG APPLIANCES LTD. V. CCE, DELHI-III - [2000 \(123\) E.L.T. 1110](#) (TRI.-DEL.)
- CCE, DELHI-IV V. M/S. ESCORTS LTD. - 2010-TIOL-378-P&H-CX = [2015 \(322\) E.L.T. 325](#) (P & H)
- ESCORTS LTD. V. CCE, DELHI-IV - [2004 \(176\) E.L.T. 817](#) (TRI.-DEL.)
- STEELCO GUJARAT V. CCE, VADODARA - [2000 \(122\) E.L.T. 381](#) (TRI.-MUMBAI)
- MARDIA CHEMICALS LTD. V. CCE, RAJKOT - [2006 \(199\) E.L.T. 110](#) (TRI.-MUMBAI)
- CCE, NAGPUR V. BALLARPUR INDUSTRIES LTD. - [2007 \(215\) E.L.T. 489](#) (S.C.)

- GODREJ INDUSTRIES LTD. V. CCE, MUMBAI - [2008 \(229\) E.L.T. 484](#) (S.C.)
- REFNOL RESINS & CHEMICALS LTD. V. UNION OF INDIA - [2013 \(287\) E.L.T. 61](#) (GUJ.).

The ratio of law declared by the above decisions to the effect that the credit initially taken if reversed subsequently is required to be considered as if no credit was ever taken and amounts to satisfying the condition of notification which are to the effect that no credit should be availed on inputs. We also note that Hon'ble Gujarat High Court's decision in the case *CCE v. Ashima Dyecot Ltd.* - [2008 \(232\) E.L.T. 580](#) (Guj.) = [2008 \(12\) S.T.R. 701](#) (Guj.) where the provisions of explanation to Rule 3, which also stands relied upon by the adjudicating authority in the present case, were taken note of, it was held that reversal would amount no credit situation. Inasmuch as the appellant has reversed the entire credit, either by way of payment of 8% or by debiting the same in Cenvat credit account, we find that the condition of notification is satisfied

4.1 We further noticed that this issue had come up for consideration before the Allahabad High Court in the case of *Hello Minerals Water (P) Ltd. v. Union of India*, reported in [2004 \(174\) E.L.T. 422](#) (All.), wherein it is held that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence, the benefit has to be given of the notification granting exemption/rate of duty on the final products since the reversal of credit on the input was done at the Tribunal's stage. While arriving at this conclusion, the Allahabad High Court has referred to various judgments under which such reversal was made subsequently and still the benefit was given to the assessee.

4.2 We also find that the appellant are eligible for exemption under Notification No. 30/2004-C.E. when they have reversed 6% of the value of exempted goods in terms of Rule 6(3)(i). We find the appellant's claim on the applicability of sub-rule (3D) of Rule 6 is also legally sustainable. The said sub-rule provides for a deeming provision to the effect that payment of amount under sub-rule (3) should be considered as credit not taken for the purpose of such exemption notification. The appellant's case is covered by the said provision as pointed out by the learned Counsel for the appellant. We find the case laws relied on by the learned Counsel for the appellant

clearly support their contention. The decisions of the Tribunal in *Life Long Appliances Ltd.* (supra), was affirmed by the Hon'ble Supreme Court reported at [2006 \(196\) E.L.T. A144](#) (S.C.). We find the original authority has gravely erred in not considering the said sub-rule (3D) and relying on explanation of Rule 3 of Cenvat Credit Rules, 2004. We find the said explanation has no relevance to the facts of the present case in view of the specific provision of sub-rule (3D) of Rule 6. As regard revenue's appeal for enhancing of the penalty imposed under section 11AC, we find that since the demand itself is not sustainable as per our above observation, the penalty being consequential would also not sustain.

05. In view of above analysis and findings, we are of the considered view that the impugned order is unsustainable, and accordingly, we set aside the same. The assessee's appeal is allowed and department's appeal is dismissed.

(Pronounced in the open court on 17.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul