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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10949 of 2019-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-000-COM-040-18-19 dated 25.03.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Mohit Industries Limited .... **Appellant**
Block No 787,791,792 Kim Char Rasta Kudsad Kim
SURAT, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat .... **Respondent**
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

WITH

EXCISE Appeal No. 11172 of 2019-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-000-COM-040-18-19 dated 25.03.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Commissioner of Central Excise & ST, Surat .... **Appellant**
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

VERSUS

Mohit Industries Limited .... **Respondent**
Block No 787,791,792 Kim Char Rasta Kudsad Kim
SURAT, GUJARAT

AND

EXCISE Appeal No. 10544 of 2021-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-000-COM-40-20-21 dated 06.04.2021 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

N J Textile Industries Pvt Limited .... **Appellant**
176/P/6 Bh Gabbarwali Mata Temple Kadodara
Palsana Kadodara, Surat, Gujarat

VERSUS

Commissioner of Central Excise & ST, Surat .... **Respondent**
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Mukund Chauhan, Advocate for the Appellant-Assessee
Shri Prabhat K. Rameshwaram, Addl. Commissioner (AR) for the Revenue.

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

DATE OF HEARING : 18.11.2022
DATE OF DECISION: 28.11.2022

FINAL ORDER NO. A/11752-11754 / 2022

RAMESH NAIR :

The issue involved in these appeals is that whether the appellant is entitled for exemption Notification No. 30/2004-CE in the fact that they are manufacturing dutiable as well as exempted goods by using cenvated inputs and the appellant have reversed 6% of the value of exempted goods in terms of Rule 6(3) of Cenvat Credit Rules, 2004. Whether after such compliance, there is any contravention of condition of Notification No. 30/2004-CE dated 09.07.2004 which in order to avail it, stipulates that assessee should not avail Cenvat credit.

2. The Adjudicating Authority has confirmed the demand of excise duty denying exemption Notification No. 30/3004-CE on the ground that once the appellant have availed Cenvat credit on inputs there is contravention of condition of notification hence, the appellants are not entitled the exemption notification. Challenging the adjudication order, the present appeals were filed. The Revenue has also filed appeal.

3. Shri Mukund Chauhan, learned Counsel appearing on behalf of the appellants submits that appellant have reversed 6% in terms of Rule 6(3) of Cenvat Credit Rules, 2004 in order to avail exemption under Notification No. 30/2004-CE therefore, in terms of sub-rule (3D) of Rule 6, the compliance of the condition of notification stood made. Therefore, even though on the

receipt of input credit was availed but subsequently reversed 6% of the value of exempted goods, Notification No. 30/2004-CE is legally available to the appellant. He placed reliance on this Tribunal's decision in the case of *Vineet Polyfab Pvt. Limited – order No. A/11109/2019 dated 11.07.2009.*

4. Shri Prabhat K. Rameshwaram, learned Addl. Commissioner (AR) appearing on behalf of the Revenue reiterates the impugned order to the extent it confirms the demand. He submits that Notification No. 30/2004-CE does not provide any relaxation that after taking credit if the same is reversed, condition of notification will be satisfied. According to the condition of the notification once the appellant availed Cenvat credit on inputs, the condition stand violated therefore, the appellant was not eligible for exemption notification.

As regards Revenue's appeal, learned AR submits that Adjudicating Authority imposed reduced penalty which is not permissible in the law and 100% penalty should have been imposed, to this extent, the Adjudicating Authority has made an error therefore, Revenue's appeal may be allowed.

5. We have considered the submissions made by both the sides and perused the record. We find that there is no dispute in the facts of the case that appellant have availed exemption Notification No. 30/2004-CE which contains following condition:-

> *"Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002."*

In the above condition, it is provided that in order to avail notification appellant should not have availed Cenvat credit.

6. The relevant sub rule (3D) of Rule 6 is reproduced below:-

> *(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.*

From the above sub-rule (3D) it is clear that even though assessee availed Cenvat credit but in compliance of Rule 6(3), they reversed the credit which will amount to non-availment of credit. With this statutory provision once the appellant complied with the provision of Rule 6(3) by reversing the credit, the condition of the notification automatically stand met. Therefore, it cannot be said that the appellant have violated the condition of notification. This issue has been considered by this Tribunal in the case of *Vineet Polyfab Pvt. Limited* cited by the learned Counsel wherein the following order was passed:-

> **"4.** We have carefully considered the submissions made by both sides and perused the record. We find that though the appellant have availed Cenvat credit in respect of inputs used in the manufacture of Polyester Texturised Yarn and cleared under nil rate of duty but it is also a fact that appellant have reversed the amount equal to 6% as provided under Rule 6(3) of Cenvat Credit Rules, 2004. With reference to similar notifications, such condition of non-availment of credit, a specific provision is made by inserting sub Rule (3D) in Rule 6 of Cenvat Credit Rules, 2004 which reads as under:- "Payment of an amount under sub-Rule (3) shall be deemed to be Cenvat credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no Cenvat credit of inputs and input services shall be taken."
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> **5.** From the plain reading of the above provision, it is observed that the provision of sub Rule (3D) was specifically provided under the statute to meet with the situation as existing in the present case. The appellant have reversed or paid the amount in terms of sub Rule (3) of Rule 6, therefore, as per sub Rule (3D), it will amount to not taking of Cenvat credit and when this be so, the condition of Notification No. 30/2004-CE stands complied.
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> **6.** The very same issue has been considered by this Tribunal in the case of Spentex Industries Limited (supra) wherein the following order was passed:-

"5. The short point for decision is the eligibility of the appellant 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 appellants claim on the applicability of sub-rule (3D) of Rule 6 is 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 ld. Counsel for the appellant even before the introduction of the said sub-rule in 2011. The Tribunal held that payment of amount under sub-rule (3)(i) of Rule 6 will make the assessee eligible for claiming such exemption as the present one. We find the case laws relied on by the ld. Counsel for the appellants 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 had fallen in error in not considering the said sub-rule (3D) and relying on explanation (3) of Rule 3. 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. In view of above analysis and findings, 5 Excise Appeal No. 10676 of 2019 we find the impugned order is unsustainable, and accordingly, set aside the same. The appeal is allowed."

Ld. Counsel Shri Willingdon Christian invited our attention to the reply under RTI enquiry that the aforesaid decision has been accepted by the department. We find that Tribunal has considered the very same issue and also interpreted the explanation given in Rule (3) as well as the provision of sub Rule (3D) of Rule 6 and came to the conclusion that once an amount under Rule 6(3) has been paid, the condition of notification has been complied.

7. In view of above discussion and applying the ratio of above decision, we find that the demand, denying the exemption Notification No. 30/2004-CE, does not sustain. Accordingly, the impugned order is set-aside and the appeal is allowed.**"**

7. From the above decision of this Tribunal, it can be seen that identical and legal issue involved in the present case, therefore, following the aforesaid decision, the demand in the present case is not sustainable.

8. As regards the Revenue's appeal, since the penalty is consequential to demand in the present case and the said demand is not sustainable, the penalty on the appellant is also not sustainable. Hence there is no merit in the Revenue's appeal.

9. Accordingly, the impugned orders are set-aside. Assessee's appeal is allowed and Revenue's appeal is dismissed.

(Pronounced in the open court on 28.11.2022*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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