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

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 10087 of 2022-SM

[Arising out of Order-in- Appeal No VAD-EXCUS-002-APP-080-2021-22 dated 28.10.2021 passed by Commissioner of CGST & Central Excise, Appeals-VADODARA-II]

Mahindra Agri Solutions Limited **.... Appellant**
Survey No 1145 Kondh Valia Ankleshwar
Bharuch, Bharuch, Gujarat -393001

VERSUS

Commissioner CGST & Central Excise, Vadodara **.... Respondent**
GST Bhawan, 1st Floor Annexe, Race Course Circle
Vadodara, Gujarat -390007

APPEARANCE :

Shri Aatish A. Shah, Chartered Accountant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 03.12.2025
DATE OF DECISION: 18.12.2025

FINAL ORDER NO. 11436/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned order dated 28.10.2021 passed by learned Commissioner, CGST & Central Excise (Appeals) Vadodara through which he has upheld the Order-in-Original passed by the Adjudicating Authority and rejected the appeal.

2. The facts of the case, in brief, are that during the course of EA-2000 audit, the Audit officers noticed that the appellant had cleared packing materials viz. used drums etc. without reversal of duty @6% as per rule 6(3) of the Cenvat Credit Rules, 2004 (CCR,2004). As per the Rule 6 of CCR, 2004 amended vide notification no 06/2015-CE (NT) dated 01.03.2015, the

appellant was required to reverse the credit @ 6% of Rs.94,135/- during April 2016 to June 2017 but they failed to do so.

2.1 Accordingly, a show cause notice dated 15.10.2020 was issued to the appellant which was adjudicated vide Order-in-Original dated 15.07.2021 passed by the Adjudicating Authority. The Adjudicating Authority confirmed the demand amounting to Rs. 94,135/- payable on packing materials viz. used drums under the provisions of Section 11A(10) of the Central Excise Act, 1944 and ordered recovery of the same alongwith interest from the appellant. He also imposed penalty of Rs. 94,135/- on the appellant under the provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 174(2)(d) and (e) of the CGST Act, 2017.

2.2 Feeling aggrieved from the above mentioned Order-in-Original, appeal was filed before the learned Commissioner (Appeals). Learned Commissioner (Appeals) while passing the impugned Order-in-Appeal, came to the conclusion that in terms of the provisions of Notification No.6/2015-CE (NT) dated 01.03.2015, as the clearances of non-excisable products i.e. used packing material, effected with the consideration by the appellant and hence, it attracts reversal of duty at the rate of 6% on the sale value of these used packing materials after 01.02.2015. The learned Commissioner rejected the arguments of the appellant that packing material cost is includible in the cost of material and does not require reversal on the clearance of the same and observed that amendment to Rule 6 of Cenvat Credit Rules, 2004 vide Notification No. 6/2015-CE (NT) dated 01.03.2015 stipulates for reversal of duty at the rate of 6% on such non-excisable products i.e. used packing material.

2.3 The Learned Commissioner also rejected the contention of the appellant that exempted goods include non-excisable goods in view of amendment in terms of Notification No. 6/2015-CE (NT) dated 01.03.2015 and unless and until such exempted goods are manufactured alongwith the non-exempted goods by the appellant, applicability of Rule 6 does not arise. Learned Commissioner observed that appellants are engaged in the manufacture of fertilizers, insecticides, fungicide etc. but they have not declared for availing any exemption or otherwise for discharging the Central Excise duty. It is also undisputed fact that they are availing the Cenvat credit on the input under the Cenvat Credit Rules. Vide Notification No. 6/2015-CE (NT) dated 01.03.2015, the intention of legislature is to levy the tax at the rate of 6% on the non-excisable goods. The appellant have sold the non-excisable goods after introduction of the Notification No. 6/2015-CE (NT) dated 01.03.2015 accordingly, the reversal of 6% in the instant case is sustainable.

2.4 Learned Commissioner has also come to the conclusion that Adjudicating Authority has rightly invoked the extended period of limitation because the appellant has not disclosed the information regarding such credit to the department at any point of time and the same were noticed during audit by the Audit Officers otherwise the same could have remained undetected. In view of above observation learned Commissioner rejected the appeal filed by the appellant and upheld the Order-in-Original passed by the Adjudicating Authority.

3. The learned Chartered Accountant for the appellant Shri Aatish A. Shah submitted that the main issue before the Tribunal is in respect of demand of Rs. 94,135/-raised in terms of Notification No. 6/2015-CE (NT) dated 01.03.2015 as amended, read with amended Rule 6(3) of Cenvat

Credit Rules, 2004 for non reversal of credit at the rate of 6%. However, both Learned Commissioner (Appeals) as well as learned Adjudicating Authority erred in confirming the demand without appreciating the amended provisions which intend that unless and until exempted goods are manufactured with non-exempted goods, applicability of Rule 6 does not arise.

3.1 Learned CA Shri Aatish Shah relied upon the order of CESTAT, New Delhi passed in **M/s. Sundaram Packaging India Pvt. Limited** vs. **CC, CGST & Central Excise, Ujjain** in appeal No. E/51633/2019 which is on the same issue as under present appeal. He has prayed that the impugned order passed by learned Commissioner (Appeals) be set-aside and appeal may be allowed.

4. Learned AR for the department reiterated the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) and submitted that the learned Commissioner (Appeals) has passed the impugned order in the light of Notification No. 6/2015-CE (NT) dated 01.03.2015 and no interreference is required in the impugned order. He prayed that the appeal may be rejected and Order-in-Appeal may be upheld.

5. I have heard the learned Chartered Accountant for the appellant and learned AR for the Revenue and perused the record. The issue to be decided in the present case is as to whether the appellant is required to reverse credit at the rate of 6% as per Rule 6 of Cenvat Credit Rules, 2004 amended vide Notification No. 6/2015-CE (NT) dated 01.03.2015, during the period April 2016 to June 2017.

5.1 I am of the view that the learned Adjudicating Authority and the learned Commissioner (Appeals) erred in passing the Order-in-Original and

Order-in-Appeal respectively without appreciating the provisions of Notification No. 6/2015-CE (NT) dated 01.03.2015, as amended. The provision of Rule 6(3) of Cenvat Credit Rules, 2004 are being reproduced here which is as follows:-

> [(3) (a) A manufacturer who manufactures two classes of goods, namely:-
>
> (i) non-exempted goods removed;
>
> (ii) exempted goods removed;
>
> OR
>
> (b) a provider of output service who provides two classes of services, namely:-
>
> (i) non-exempted services;
>
> (ii) exempted services,
>
> Shall follow any one of the following options applicable to him, namely;-
>
> [(i) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]
>
> (ii) pay an amount as determined under sub-rule 3 (A);

5.2 Admittedly the appellant herein is manufacturing only one kind of goods. Admittedly, the packing material - used drums as have been cleared by the appellant, irrespective for consideration, are not the goods manufactured by the appellant.

5.3 There has been an amendment in Rule 6(1) with effect from 01.03.2015 by virtue of Notification No. 6/2015-CE (NT) dated 01.03.2015 and after the proviso, the following explanations have been inserted:-

> "**Explanation 1** : For the purpose of this rule, exempted goods or final products as defined in clause (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory."

> **Explanation 2** : Value of non-excisable goods for the purpose of this rule, shall be the invoice value & where such Invoice value is not available such value shall be determined by using reasonable means consistent with the principles of valuation contained in Excise Act & Rules made thereunder."

The Tribunal has held in **M/s. Sundaram Packaging India Pvt. Limited** vs. **CC, CGST & Central Excise, Ujjain** (supra) that irrespective of above mentioned amendment the scope of Rule 6 is still with respect to the inputs/ input services used in or in relation to the manufacture of exempted goods alongwith manufacture of non-exempted goods. Hence, irrespective of exempted goods include non-excisable goods in view of the amendment in terms of Notification No. 6/2015-CE (NT) dated 01.03.2015, unless and until such exempted goods are manufactured that too alongwith the non-exempted goods by the assessee, applicability of Rule 6 does not at all arise. There is no question of applicability of the explanation thereof as inserted vide Notification of 2015 in the present case. The Tribunal cited the decision of the Hon'ble Apex Court in the case of **Union of India** vs. **DSCL. Sugar Limited** reported in 2015 (322) ELT 769 (S.C.) that the products which do not qualify the definition of 'manufacture' in Section 2 (f) of Central Excise Act, there cannot be any excise duty for such products.

5.2 The Tribunal further held that Rule 6 of Cenvat Credit Rules, 2004, has been wrongly invoked in case of the appellant for demanding the reversal of Cenvat Credit availed by him at the rate of 6% of the value of empty packets of raw-material and empty drums of the oils used by the appellant in manufacture of PP woven fabric when cleared for consideration.

5.3 In **Cadila Healthcare Limited** vs. **CCE & ST, Vadodara,** Excise Appeal No. 10100 of 2020, this Tribunal has held that in view of the judgment of Hon'ble Allahabad High Court in the case of **Balrampur Chini Mills Limited** vs. **UOI,** empty packaging material of cenvatable input is not

liable for payment either as excise duty or as Cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004.

5.4 In **Banco Gasket (I) Limited**, the Tribunal has observed as follows:-

> **"4.** I have carefully considered the submissions made by both the sides and perused the records. I find that the Show Cause Notice was issued demanding the amount equal to 6% of the value of packaging material cleared by the appellant. The said packaging material is nothing but an empty packaging material in which input was received by the appellant. Therefore, it is the fact that the said packaging material is not arising out of manufacture process of any final product. The Show Cause Notice also invoked Explanation (1) & (2) of Rule 6(1) of Cenvat Credit Rules which is reproduced below:-
>
> > "Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.
> >
> > "Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under."
>
> On plain reading of the above explanation, I find that as per explanation (1) only goods which are defined under clause (d) and (h) of Rule 2 could be covered for the purpose of demand under Rule 6(3), for ease of reference clause (d) and (h) of Rule 2 are reproduced below:-
>
> > (d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excisable leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [and goods in respect of which the benefit of an exemption under Notification NO.1/2011-CE, dated 1-3-2011 or under entries at S. Nos. 67 and 128 of Noti. No. 12/2012-CE dt. 17-3-2012 is availed];
> >
> > (h) "final products" means excisable goods manufactured or produced from input, or using input service;
>
> On plain reading of the above definition of "exempted goods" as well as "final product," it is clear that the said goods should be arising out of the manufacturing activity even though after that the said goods may or may not be excisable goods. In the present case, the packaging material since not arising out of any manufacturing process the same will not fall either under Sub-clause (d) or sub-clause (h) of Rule 2 of Cenvat Credit Rules, 2004. As regard explanation (2), it is only for the purpose of value of the non-excisable goods to calculate the payable amount under Rule 6(3). Since the goods does not fall under the explanation (1), explanation (2) will obviously not be applicable therefore, the charges made in the Show Cause Notice are not tenable.
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> 4.1 Further, I find that an identical case has been considered by the Hon'ble Supreme Court in the case of WEST COAST INDUSTRIAL GASES LTD.(supra) wherein, their lordships passed the following order:-
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> > "3. In our view, the said reasoning cannot be said to be, in any way, erroneous. There is no specific rule levying duty on such drums/barrels/ containers.

4.On this aspect, learned counsel for the assessee pointed out that the Government of India, Ministry of Finance (Department of Revenue), has specifically issued a circular dated 5th September, 1996, inter alia, stating as under :-

The matter has been examined, container cannot be treated as inputs. Credit taken under Modvat is with reference to the duty on inputs and not on the containers, notwithstanding the fact that the value of the inputs may include the value of containers and the duty on the inputs may be on "2. ad valorem basis. It is, therefore, clarified that no duty would be payable when such empty containers are cleared from the factory."

5.Thereafter, on the basis of the decision rendered by the CEGAT, a circular was issued on 23rd March, 1999, wherein it has also been observed as under :- The matter has been examined by the Board. In view of the above CEGAT judgment, it has been decided not to demand duty on waste packages/containers used for packaging modvatable inputs "2. when cleared from the factory of the manufacturer availing of Modvat credit and to follow the CEGAT decisions."

6.It is true that after the issuance of the aforesaid circular as appeal was filed before this Court, the third circular was issued on 19th July, 1999 to the effect that as the Department has filed an appeal against the order of the CEGAT and as it is admitted by this Court, it has been decided by the Board to withdraw the Circular dated 23rd July, 1999. It appears that while issuing the circular dated 19th July, 1999, the concerned authority has not applied its mind to the ratio laid down by the CEGAT in OIL‟s case (supra) wherein it has been pointed out that there is no specific provision under the Rules considering such barrels/drums as a waste arising out of manufacturing process. In this view of the matter, this appeal is dismissed. There shall be no order as to costs.

Civil Appeal Nos. 3877-3881, 6775-79, 6780-81/99, 2173- 2176, 4010/ 2001, 300-301, 2804, 4367, 5601, 8597- 98/2002 and 1421/2003 :

7.In view of the above order, these appeals are also dismissed. There shall be no order as to costs."

In view of the above judgment, it is clear that the empty packaging material wherein, the input was received, the removal of the same will not attract any duty. The Hon'ble Allahabad High Court in the case of BALRAMPUR CHINI MILLS LTD. v/S. UNION OF INDIA (supra) on the identical issue it was held as under:-

"34. In light of the above we are of the considered opinion that in absence of Bagasse being a manufactured final product, the obligation of reversal of Cenvat Credit under Rule (1) of the Cenvat Credit Rules, 2004 is not attracted, and the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India and others v M/s. DSCL Sugar Ltd and Others (supra) still holds the field. Rule 6 of the Cenvat Credit Rules would have no application for reversal of Cenvat Credit in relation to Bagasse. The Circular No. 1027/15/2016-CX, dated 25-4-2016, contained in Annexure-1 to the writ petition to the extent that it includes Bagasse under the purview of the reversal of credit of input services in terms of Rule 6 of the Cenvat Credit Rules, 2004, as well as the impugned show cause notice dated 24-3-2017 contained in Annexure-2, are hereby quashed."

In view of the above judgment of the Hon‟ble Allahabad High Court which has taken note of Hon‟ble Supreme Court judgment in the case of UNION OF INDIA v/S. DSCL SUGAR LTD. (supra), even though the agricultural waste and residue

emerged from the manufacture of sugar, it was held that demand under Rule 6(1) shall not sustain.

5. As per my above discussion and findings which is supported by the judgments cited (supra), I am of the view that in the facts of the present case the demand under Rule 6(3) is not sustainable. Accordingly, the impugned order is set aside, appeal is allowed."

6. I am of the view that the present case is fully covered by the order passed in **M/s. Sundaram Packaging India Pvt. Limited** vs. **CC, CGST & Central Excise, Ujjain** (supra) and **Cadila Healthcare Limited** vs. **CCE & ST, Vadodara** (supra) and the facts of both the cases are very similar to the present case. Therefore, I am of the view that learned Adjudicating Authority and the learned Commissioner (Appeals) have erred in holding and confirming the demand of Rs. 94,135/- payable on packing materials used under section 11A (10) of Central Excise Act, 1944 and imposing penalty of equal amount on the appellant. Accordingly, I hold that the impugned order is not sustainable and is liable to be set-aside.

7. Consequently, the impugned order is set-aside and the appeal is allowed.

(Order pronounced in the open court 18.12.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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