CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.55097 of 2014

(Arising out of Order-In-Original No.15/Commr./M-II/2014-15 dated 13.06.2014 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut-II)

Commissioner of Customs, Central Excise & Service Tax, Meerut-II **.....Appellant**
(Opposite Shaheed Park, Delhi Road,
Meerut-250001)

VERSUS

M/s Arora Aromatics **....Respondent**

(Now known as M/s Arora Aromatics Pvt. Ltd.
2 KM Stone Moradabad Road, Sambhal, Moradabad)

APPEARANCE:

Mr. Sarweshwar T. Khairnar, Authorised Representative for the Appellant
Shri Atul Gupta & Shri Prakhar Shukla, Advocates for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70165/2023

DATE OF HEARING : 26.09.2023
DATE OF DECISION : 26.09.2023

P.K. CHOUDHARY:

The present appeal is arising out of Order-In-Original No.15/Commr./M-II/2014-15 dated 13.06.2014 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut-II.

2. Brief facts of the case are that the Respondent is engaged, *inter alia,* in manufacture of both dutiable goods namely Peppermint Oil, Menthone Oil, Terpene etc., and exempted goods such as Menthol Crystal and Menthol Flake (exempted

vide Notification No.4/2008-CT dated 1.3.2008) falling under Chapter sub-heading 2906 11 00, 3003 90 21 of the First Schedule to the Central Excise Tariff Act, 1985. The Range Superintendent vide letter dated 2.2.2009 requested the party to maintain separate records of inputs used in the manufacture of dutiable and exempted goods and informed that in absence of maintenance of such separate accounts, they would be either required to pay an amount equal to 10% /5% of the value of exempted goods or an amount equivalent to the Cenvat Credit attributable to the inputs/input services used in or in relation to manufacture of exempted goods in terms of Rule 6(3) of the Credit Rules. In response, the Respondent vide their letter dated 20.2.2009 submitted that Rule 6(2) of the Credit Rules are applicable to the present case. The Respondent stated that they are in a position to maintain separate accounts for production of both dutiable as well as exempted goods as stipulated in the above provisions, so, they shall be entitled to credit of duty of inputs used exclusively in the manufacture of dutiable products and they shall ensure that credit of duty used in the exempted goods is not taken. It was further submitted that if the above-mentioned procedure is not followed, only then the Respondent will be required to make payment as stated in Rule 6(3) of the Credit Rules. Furthermore, it was submitted that such payment shall not be required to be made if the excisable goods are cleared without payment of duty for export by virtue of Rule 6(6)(v) of the Credit Rules. On 17.12.2009. The officers of Central Excise Range visited the premises of the Respondent based on the information that the party was engaged in the production of dutiable as well as exempted finished goods without payment on clearances of exempted final products at appropriate rate. On perusal of the records of the Respondent, it was observed that they were maintaining separate records for duty paid inputs and the ones received on non-duty payment. It was the department’s view that the party was required to maintain two separate accounts for raw material used in excisable goods and ones used in exempted goods. Further, the statement of Shri Arvind Kumar Arora, Proprietor was also recorded under Section 14 of the Central Excise Act, 1944. A Show Cause Notice dated 26.3.2013 was issued to the Respondent proposing to demand Excise duty amounting to Rs.6,17,16,393 invoking extended period of limitation under the proviso to Section 11A(1) of the Central Excise Act, 1944 along with interest and penalty alleging that the Respondent did not maintain separate accounts for inputs used in manufacture of dutiable as well as exempted goods in contravention of the provisions of Rule 6(3), Rule 6(3)(b) of the Credit Rules. Though the department resumed the record on 17.12.2009 relating to inputs and finished goods, however, the same was not relied upon in the show cause notice. In the draft show cause notice, it was proposed to rely, but finally, the same does not find mentioned in the impugned show cause notice. The documents were finally obtained under RTI alongwith the records relating to the proceedings to issue SCN. The record very specifically mentioned the fact that the exempted goods were manufactured out of inputs on which credit was not taken. After considering the defense reply filed by the Respondent, the Ld. Commissioner, Customs and Central Excise, Meerut-II was pleased to drop the proceedings against the Respondent and set aside the demand proposed along with interest and penalty on the following grounds:

a) In terms of Rule 6(6) of the Credit Rules, no reversal of an amount or proportional reversal required in terms of Rule 6(1), (2),(3) and (4) of Credit Rules as the credit has been availed on inputs, which are used in manufacture of goods exported under bond.

b) The Respondent has maintained separate records for manufacture of (i) dutiable goods out of the raw material on which credit was taken; (ii) exempted goods out of raw material on which credit had not been taken. Thus, Rule 6(3) of Credit Rules is not applicable.

c) The SCN does not specify the common inputs on which credit has been taken and subsequently used in manufacture of dutiable and exempted goods, thus, no reversal to be made under Rule 6(3) of Credit Rules;

Being aggrieved with the aforesaid impugned Order, the Appellant-Department has filed the present appeal.

4. Learned Authorised Representative appearing on behalf of the Revenue has reiterated the grounds of Appeal.

5. Learned counsel appearing on behalf of the respondent submits that the Respondent has maintained separate records of the utilisation of inputs on which credit was taken in the manufacture of dutiable goods only. Thus, separate records were maintained for duty paid inputs and duty-free inputs utilised in the manufacture of dutiable and exempted goods in accordance with Rule 6 of the Credit Rules. In this regard, details of finished dutiable goods and exempted goods along with their raw materials is tabulated below:

Dutiable Goods

Finished Goods	**Raw Materials**
Peppermint Oil/ Dementholised Peppermint Oil	Mentha Oil
Menthone	DMO
Other essential oils	Other Essential Oil
Mentha Oil	
Terpenes	

Exempted Goods

Exempted Goods	**Raw Materials**
Menthol Crystals	Menthol Flakes
Menthol Powder	Mentha Oil
	DMO

From the above table, it is clear that there are two common inputs i.e., DMO and Mentha Oil. However, even for these two common inputs, separate registers have been maintained. It is pertinent to mention here that out of these common inputs, only DMO is duty paid i.e., Cenvatable. Mentha Oil has been purchased from farmers which is non-duty paid. Therefore, separate records were required to be maintained only for one common input i.e., DMO.

6. He further submits that the Respondent is exporting menthol crystal apart from domestic clearances and as such reversal or maintenance of separate records are not required in terms of Section 6(6)(v) of the Credit Rules. It is further submitted that the department vide the said SCN has not specified the common inputs on which credit has been taken and were subsequently used in the manufacture of dutiable and exempt goods. Thus, the Learned Commissioner vide the impugned Order has correctly dropped the demand against the Respondent and as such the department's appeal is liable to be dismissed. Reliance is placed on the following judgements :

- **Indian Potash Ltd. v. Commissioner of Central Excise, Allahabad, 2012 (281) ELT 622 (Tri.-Del.);**
- **Kisan Sahkari Chini Mills Ltd. v. Commissioner of C. Ex., Lucknow, 2012 (293) ELT 232 (Tri.-Del.)**

7. Learned counsel further submits that the present demand has been raised for the period from March 2008 to February 2010 and the SCN was issued on 26.3.2013 based on the statement recorded and record resumed on 17.12.2009, therefore the entire period is beyond the time limit of one year and is barred by limitation. The Respondent was under the bona fide belief that they had correctly availed the Cenvat Credit on only those inputs which are used in the manufacture of dutiable goods. This belief was strengthened on account of the separate records maintained. Further, ER 1 returns were filed regularly by the Respondent. Once it is established that the Respondent was following the procedure prescribed under Rule 6 of the Credit Rules, thus, allegation of fraud or suppression is unsustainable. Reliance is placed on **Padmini Products v. Collector of C. Ex., 1989 (43) ELT 195 (SC).**

8. Heard both sides and perused the appeal records.

9. We find that the respondent in their reply have pleaded that they have been maintaining separate records of raw materials to be used in Menthol Crystals/Menthol Powder with effect from 1.3.2008 (when this product becomes exempted from duty) .The respondent have also contended that they purchased Mentha Oil, Dementholized oil, essential oil from Farmers and traders, on which no credit was taken. The respondent has also submitted that apart from domestic clearances they are also engaged in export of menthol crystal. In the Show Cause notice there is no allegation against the respondent that they have taken any credit on common inputs/input service used in the dutiable as well exempted goods. It is not relevant as to how the separate records are maintained rather it is important that the records are maintained in such a way that no credit on constituent inputs is taken which is used in manufacture of exempted goods either by sole use are by common use. There is no such allegation in the show cause notice against the respondent for taking credit on any input which is solely used in exempted goods or used as common input.

10. We find that the notice alleged that though the party maintains separate records but not as required under Rule 6 (2) of the CCR, 2004. We find that this view is not supported by any evidence and there is no prescribed manner in Rule 6 (2) for maintaining separate records. We also find that the only requirement is that the credit should not be taken on inputs used in exempted goods. If the inventory of exempted goods are separately maintained and no credit is availed on the inputs used therein, this will serve the purpose. The demand of 10% amount under sub-rule 3 of Rule 6 of the CCR, 2004 on the export clearances as detailed in Annexure-A to the notice is contrary to the provisions of sub-rule 6 of Rule 6 of the Cenvat Credit Rules, 2004 as the export clearances are one of the clearances among others to which the provisions under sub- rules (1), (2), (3) & (4) of Rule 6 shall not be applicable. Therefore, we find that the demand of an amount on export clearances is not sustainable in the light of the provisions of sub rule 6 of Rule 6 of the CCR'2004.

11. In view of the above discussions, we do not find any infirmity in the impugned order and accordingly, the same is sustained. The appeal filed by the appellant is dismissed.

(Pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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