CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70756 of 2017

(Arising out of Order-in-Appeal No.HPU/EXCUS/000/APPL-I/339/2016-17 dated 15.02.2017 passed by Commissioner (Appeals-I) Central Excise, Meerut)

M/s Shree Baba Exports **.....Appellant**
(C-21, Industrial Estate, Roshan Bagh,
Civil Lines, Rampur (U.P)

VERSUS

Commissioner, Customs & Central Excise, Hapur
....Respondent

(Opp. CCS, University Meerut)

APPEARANCE:

Shri S.K. Mathur, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70230/2023

DATE OF HEARING : 27.09.2023
DATE OF DECISION : 27.09.2023

P.K. CHOUDHARY:

The present appeal is arising out of Order-in-Appeal No.HPU/EXCUS/000/APPL-I/339/2016-17 dated 15.02.2017 passed by Commissioner (Appeals-I) Central Excise, Meerut.

2. This is the second round of litigation before this Tribunal. The facts of the case in brief are that the Appellant is manufacturer of Menthol/Menthol Crystals (29061100) & DMO (33012590) of Central Excise Tariff Act, 1985. The present issue

relates to demand for reversal of Cenvat credit on Menthol Crystals which was exempted vide notification 4/2008-CE dated 01.03.2008, while DMO remained chargeable to duty. The Appellant had in stock 1503.9 Kgs of Menthol Crystals and 22131.6 Kgs of Menthol Powder involving duty credit of Rs. 20,59,814 which was demanded under Rule 6 & 11 of the CENVAT Credit Rules, 2004 read with section 11A for stocks lying in the factory as on 01.03.2008.

3. The show cause notice was issued and the demand was confirmed by original authority and penalty was imposed which was also affirmed by Learned Commissioner (Appeals). However, he dropped the penalty imposed. The Tribunal in the earlier round vide order dated 12.11.2014 held that Rule 11(3) shall not be applicable in the subject case as only Menthol is exempt while DMO remained chargeable to duty. On the issue of Rule 6, the Tribunal held that in view of judgments of Hon'ble High Court in the case of Punjab Stainless Steel (Delhi) and Drish Shoes (HP), if fully exempted excisable goods are exported under bond, LUT provisions of sub rule (1), (2) and (3) shall not be applicable and Cenvat would not be liable to be reversed. However, if final product is cleared for home consumption, Cenvat would not be admissible and remanded the matter for ascertainment of the exports.

4. Consequent upon remand, Appellant filed fresh defence reply dated 16.02.2016 and contended that out of total quantity under dispute, 3250 Kgs have been cleared for home consumption, while remaining quantity have been exported.

Relevant invoices ER-1 and export documents were produced. Appellant also paid an amount of Rs. 2,81,190/- as inadmissible Cenvat. In the second round of adjudication, the Additional Commissioner contended that since the goods claimed as exported are not against LUT or bond, therefore, benefit of Rule 6(6) cannot be extended on export goods and again confirmed the demand and also imposed penalty of equal amount. The order was upheld by Learned Commissioner (Appeals), however he again set aside the penalty.

Being aggrieved with the impugned order, the Appellant has filed the present appeal before the Tribunal.

5. Learned counsel for the Appellant submitted that there is no dispute that export was undertaken as per ARE-1, however the Original Authority disallowed the credit holding in Para 9 of the order, "However, the provisions of either sub-rule (1) or sub-rule (2) read with sub-rule (3) of Rule 6 would not be applicable, if the Appellant were exporting their finished goods out of India under bond or under Letter of Undertaking." Copies of relevant ARE-1s were submitted before the Adjudicating Authority. Therefore, clearance of said exported consignments under ARE-1s itself indicates that said exports were made under Bond/LUT.

6. He further submitted that it is a settled law that Cenvat credit is not required to be reversed in case the exempted finished goods manufactured out of duty paid inputs are exported under bond/LUTs. It has been further clarified and held in a number of case laws that even if exempted goods are not

cleared for export under bond or LUT, still the benefit of Rule 6(6) of the CENVAT Credit Rules, 2004 cannot be denied.

7. Learned counsel has relied upon the following judgments in support of his submissions :-

(i) Repro India Ltd Vs Union of India 2009 (235) ELT 614 (HC-Bom) (Para-9)

(ii) Union of India Vs Sharp Menthol India Ltd., reported in 2011(270) E.L.T. 212 (Bom.)

(iii) SLP filed by UOI against this order of Hon'ble High Court of Bombay was dismissed by Hon'ble Supreme Court by order dated 04.04.2012.

(iv) Commissioner of Central Excise Vs Drish Shoes Ltd., reported in 2010(254) E.L.T. 417 (H.P.)

(v) SLP filed by Revenue against this order of Hon'ble High Court of HP has been dismissed by Hon'ble Supreme Court 2018 (36) ELT A-191 (SC).

(vi) Jolly Board Ltd Vs CCE, Aurangabad 2015 (321) ELT 502(T)

(viii) Following the above orders, Tribunal decided in favour of Well Known Polyester Ltd Vs CCE, Vapi 2011 (267) ELT 221 (T).

8. Learned Departmental Representative appearing on behalf of the Revenue reiterated the findings given in the impugned order.

9. Heard both the sides and perused the appeal records.

10. We find that the issue is no more *res integra* and is squarely covered by the judgment of Hon’ble High Court of Himachal Pradesh at Shimla in the case of Commissioner of

Central Excise V/s Drish Shoes Ltd. reported as 2010 (254) E.L.T. 417 (H.P.). Relevant paras of the judgment are reproduced below:-

> ***"14.*** *The Commissioner (Appeals), while accepting the appeal and reversing the order of Assistant Commissioner, held that Assistant Commissioner had not taken holistic view of the matter and allowed himself to be misled by reading only a few provisions. He held that the object of exception clause contained in Rule 6, as noticed hereinabove, was to promote the export of goods manufactured in India. He observed that in any case, exception clause of Rule 6 allowed the credit/refund of CENVAT paid on inputs in the manufacture of excisable products, exported under a bond.*
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> ***15.*** *The Tribunal has upheld the order of the Commissioner (Appeals).*
>
> ***16.*** *The Scheme of CENVAT Credit Rules, 2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows that CENVAT credit/refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading of Rule 3 and sub-rule (1) of Rule 6 of the CENVAT Credit Rules, 2002, as also the Rules of 2004, so as to avoid indirect double taxation on inputs. However, this rule is not absolute. It is subject to exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.*
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> ***17.*** *Sub-rule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in case of dutiable goods. It appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for CENVAT could not be claimed in respect of input of those goods, at least under the aforesaid exception clause. To*

overcome this kind of anomalous situations, exception clause contained in sub-rule (6) of Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.

18. *Learned counsel for the appellant argued that term 'excisable goods' used in sub-rule (6) of Rule 6 of 2004 Rules, meant only dutiable goods. Submission has been noticed only to be rejected.*

19. *A Division Bench of Bombay High Court in 2009 (235) E.L.T. 614 (Bom.), Repro India Ltd. v. Union of India, while dealing with a similar situation and interpreting the provisions of Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, has held that expression " excisable goods" is wider than the expression " exempted goods", as it includes both dutiable as also exempted goods.*

20. *In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No. 1 is answered accordingly.*

21. *As regards question No. 2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final products which are exempt from duty, can claim refund of CENVAT. So, this question is also answered against the appellant.*

22. *view of the aforesaid answers to the questions of law, appeal is dismissed."*

11. By respectfully following the ratio as laid down by Hon'ble High Court of Himachal Pradesh at Shimla and also observing that the appeal filed by the Revenue against the decision of the Hon'ble High Court has been dismissed by Hon'ble Supreme

Court reported as 2018 (36) ELT A-191 (S.C.), the impugned order is set aside.

12. In view of the above discussions the Appeal filed by the Appellant is allowed with consequential relief as per law.

(Pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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