IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/70282 & 70283/2018-EX[SM]

(Arising out of Order-in-Appeal No. 04-05-GBN-EXST-APP-17-18 dated 22/01/2018 passed by Commissioner of Central Excise & GST (Appeals), Greater Noida)

M/s Dabur India Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Atul Gupta & Shri Ayush Agarwal, Advocates for Appellant
Shri Gyanendra Kr. Tripathi, Asstt Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	13/07/2018
Date of Decision	:	13/07/2018

FINAL ORDER NOs-**71593-71594 / 2018**

Per: Anil G. Shakkarwar

The above stated two appeals are arising out of Order-in-Appeal No. 04-05-GBN-EXST-APP-17-18 dated 22/01/2018 passed by Commissioner of Central Excise & GST (Appeals), Greater Noida, involving the same issue for different period, therefore, they are taken together for decision. Appeal No.E/70283/2018 is involving the period from 01/04/2014 to 31/12/2015, involving the demand of Cenvat credit of Rs.15,20,020/- and the other appeal is for the period from 01/01/2016 to 30/09/2016 involving Cenvat credit amounting to Rs.1,71,179/-.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Ayurvedic proportion called 'Chyawanprash'. During the manufacture of said product 'Amla Pisthi' which is agricultural product is produced. Agricultural produce Amla is a seasonal crop and therefore, Amla Pisthi is required to be stored. Further, it needs storage in cold storage facility. Appellant cleared Amla Pisthi to cold storage located outside the factory on payment of Central Excise duty @ 1% or 2% as applicable under Notification No.01/2011-CE dated 01/03/2011. As per requirement said Amla Pisthi was returned to the manufacturing unit and duty so paid was availed by the appellant, as Cenvat credit under Rule 16 of Central Excise Rules, 2002. Revenue entertained a view that as provided under Rule 3(1)(i)(a) of Cenvat Credit Rules, 2004 Central Excise duty paid in terms of Notification No.01/2011-CE dated 01/03/2011 is not admissible. Therefore, through show cause notice and statements the demands were raised for recovery of said Cenvat Credit under Cenvat Credit Rules, 2004. The demands were confirmed and penalties were imposed by the Original Adjudicating Authority. On preferring appeals, the learned Commissioner (Appeals) rejected the appeals. Therefore, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant. He has submitted that the credit was availed by them under Rule 16 of Central Excise Rules, 2002. He has further stated that under Sub-rule (1) of Rule 16 of Central Excise Rules, 2002, there is a deeming provision to the effect that if the goods on which duty was paid at the time of clearance and that such goods are brought back to the factory, the goods received are treated as inputs under the Cenvat Credit Rules, 2004 and also that the appellant is entitled to take Cenvat credit of duty paid on such goods.

He further submitted that had they opted for provisions under Rule 4 of Central Excise Rules, 2002 which provides for storage of manufactured goods without payment of duty outside the factory and that the permission was denied. Had they been permitted for storage outside the factory then there was no need to pay the Central Excise duty and the question of taking credit did not arise and that the law should not discriminate, if they have opted for provisions of Rule 16 in place of Rule 4 of Central Excise Rules, 2002.

4. Heard the learned A.R. for revenue who has supported the impugned orders.

5. Having considered the rival contentions and on perusal of records, I find that the said Rule 3 of Cenvat Credit Rules provides for baring the appellant from taking Cenvat credit of

duty paid by availing the benefit of exemption under Notification No.01/2011-CE. However, I do not find the said Rule 3 applicable in the present case, because in the present case Cenvat credit is not availed by virtue of the provisions of said Rule 3 of Cenvat Credit Rules, 2004 but it is availed by virtue of Rule, 16 of Central Excise Rules, 2002 where there is a deeming provision that such goods shall be deemed to be inputs. I, therefore, do not find any merit in the view taken by Revenue.

6. I, therefore, allow both the appeals filed by the appellants by setting the impugned orders. The appellants shall be entitled for consequential relief, as per law.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

Lks/akp