**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**ALLAHABAD**

REGIONAL BENCH - COURT NO.I
**(E-Hearing)**
**Excise Appeal No.70117 of 2024**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-84-2022-23 dated 17/06/2022 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

**M/s Laser Micromed Disposables,** **.....Appellant**
(D-90, H.C. Ph-II, Noida)

*VERSUS*

**Commissioner of Central Excise, Noida** **....Respondent**
(C-56/42, Sect-62, Noida)

**APPEARANCE:**

Shri S.D. Gaur, Consultant for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70055/2025**

DATE OF HEARING : 03 October, 2024
DATE OF PRONOUNCEMENT : 04 February, 2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order-in-Appeal No. NOI-EXCUS-001-APP- 84 -2022-23 dtd 17.06.2022 of the Commissioner (Appeals), CGST, Noida. By the impugned order, order in original No. 21/Joint Commissioner/CE/ CGST/Noida/2021-22 dated 28.12.2021 holding as follows has been upheld:

*"ORDER*

*(i) I confirm the demand & order for recovery amounting to Rs.17,85,239/- Rs Seventeen Lacs Eighty Five thousand two hundred and thirty nine only) under Rule 6 (2) (i) & Rule 14 of Cenvat Credit Rules 2004 read with Section*

*11A(4) & 11A(10) of Central Excise Act, 1944 & an amount of Rs 36,717/- may not be appropriated against the demand as they have already reversed the same*

*(ii) I confirm the demand & order for recovery of duty short paid amounting to Rs.3,086/- (Rs Three thousand and eighty six only) under Section 11A (4) of Central Excise Act, 1944.*

*(iii) I order for recovery of Rs.30,452/- (Rs Thirty thousand four hundred and Fifty two only) refunded to party in excess of rebate available to them for clearance of good to NSEZ from them under Section 11A of Central Excise Act, 1944.*

*(iv) I order for recovery of interest at the appropriate rate on the above amount at So No (i) to (iii) above under Section 11AA of the Central Excise Act, 1944 as applicable.*

*(v) I impose an equal amount of penalty listed above in terms of Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 for contravention of various provisions of Central Excise All, 1944 and Central Excise Rules made there under, as discussed, supra.*

*The dues so adjudged be paid forthwith.*

2.1 During the course of audit of the records of appellant for the period 2010-11 to 2103-14 it was observed that the appellant was engaged in manufacture and clearance both dutiable goods (plastic moulded lamp fittings, plastic moulded cookwares, pens) as well as exempted goods (parts of pen). They also availed Cenvat Credit on common inputs and input services.

2.2 Accordingly in terms of Rule 6(2) of CCR, 2004 they were required to maintain separate records/inventory for common inputs and input services used in relation to manufacture of dutiable and exempted goods. The appellant also failed to follow the procedure laid down in Rule 6(3)(i) and Rule 6(3)A of CCR, 2004 hence in terms of Rule 6(3)(i) of CCR 2004 they were required to pay an amount equal to 5% or 6%, as applicable at relevant time, of the value of exempted goods. The said amount was worked out as Rs. 17,85,239/-.

2.3 Besides, short duty payment of Rs. 3,086/- and excess payment of rebate of Rs. 30,452/- to the appellant was also worked out.

2.4 A show cause notice dated 27.03.2015 read with corrigendum dated 14.3.2016 was issued to the appellant and the demand so raised was confirmed by order in original dated 29.03.2016 which was also upheld by Commissioner (Appeals) by order in appeal dated 25.09.2017.

2.5 On appeal by the appellant, Hon'ble CESTAT vide its F.O. No. A/70897/2018(SM)[BR] dated 15.5.2018 remanded back the matter to the adjudicating authority for fresh consideration.

2.6 In terms of the order of CESTAT, matter was taken up for re-adjudication and adjudicating authority vide his order in original referred in para 1, confirmed the demand along with interest and penalties.

2.7 Aggrieved appellant filed the appeal before Firs Appellate authority which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri S D Gaur, Advocate for the appellant, Shri Manish Raj and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted that:

- That the impugned order is not proper, reasonable and justified
- That the appellant maintained separate record for input used indutiable as well as exempted goods. For input used in dutiable goods record was maintained in RG 23A Part-ll, and for input used in exempted goods record was maintained in form showing Date of receipt, Bill no., Name

of Supplier, Item Quantity and value/ Price of the goods received .

- The account maintained for input or exempted goods appears sufficient as required under rule (2) of rule 6 of Cenvat credit rules 2004. Copy of record maintained was submitted to the adjudicating and lower appellant authority. These record are not considered proper by the authorities for the purpose of rule 6(2) of Cenvat credit rules and demand is made on the exempted goods as per legal provisions which is not correct, In the face of fact that appellant maintained separate record for input used in the manufacture of exempted goods, the demand made is not legal.
- The finding that mere furnishing a list of raw material by the appellant does not prove that during the relevant period they have indeed maintained separate account is not proper and correct.
- The account of Purchase of raw material for exempted goods was maintained from 23.08.2010 to 31.03.2014 copy of which was submitted to original authority as well as to appellant authority but both the authority have not relied upon on the documents and have made demand of duties which is not justified and legal.
- the observation of the original Authority in para 1.7 that document showing purchase of raw material for exempted goods from 31.08.2010 onward whereas as per E.R.3 they have shown to have produce quantity of exempted goods in July 2010. Thus the document provided by them are not complete and reliable. The above observation of the adjudged 'Authority does not appear proper as on one stance the total document can not be treated as un-reliable.
- appellant made are supply agreement with M/s Luxor International (P) limited for manufacture and supply of goods required by company. The exempted goods were

supplied to M/s Luxor International (P) Limited as per agreement. As per section 4 of the agreement, the product are to be manufactured from such material and by such process as would be approved / provided by the company. Most of their goods were supplied by the purchaser M/s Luxor International (P) Limited. And on such input no Cenvat credit was taken. The original authority as well as appellate authority has not considered all these details read with documents received for input to be used in manufacture of exempted goods. The documents/ list submitted for such input is not accepted as proper amount for the input received and used in the manufacture of exempted goods.

- there is no evidence to show that appellant availed and used credit of duty on input used in the manufacture of exempted goods. In the absence of such evidence the contention of audit, original authority and appellant authority that appellant used credit of input used in manufacture of exempted goods is not proper. Therefore demand of duty as made in order is not justified and legal. The fact is that appellant maintained separate account for the input received and used in the manufacture of exempted goods on which no credit was taken.
- the amount of Rs. 36,717/- was deposited on account of credit taken of service tax in respect of proportionate services of security availed in this respect of exempted products. The amount paid is not related to any input credit on input used in exempted goods
- demand of Rs. 30,452/- it is submitted that it has no relation with the rebate claim received by the appellant. The fact is that purchaser of Noida Export Processing Zone returned some goods supplied to him credit was taken of amount of duty paid by purchaser / supplier.
- for demand of Rs. 3,086/- it is submitted that a credit note was issued to M/s Luxor International, limited for

printing work to be under taken at their end appellant has no facility of printing . The price of goods cleared include printing charges therefore demand of duty as short paid is not justified

- demands made in the order are not correct and legal and the impugned order deserve to be set aside.

3.3 Learned authorized representative reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Tribunal has vide Final Order No.70897/2018 dated 15.05.2018 remanded the matter back to original authority with following observations:

> *3. During the course of adjudication as also before appellate forum the appellant took a categorical stand that they were maintaining separate Cenvat accounts for dutiable as well as exempted goods. They also contended that wherever common accounts were maintained they had reversed the amount availed on the common inputs, which were also used for the manufacture of exempted products.*
>
> *4. While dealing with the said stand of the assessee, the appellate authority has observed that they have not produced any evidence to show that the proportionate Cenvat Credit was reversed by them before clearance of exempted goods.*
>
> *5. However, I find that the appellants' stand that they had maintained separate Cenvat accounts does not stand considered in detail by the lower authorities. Further even after the appellant has reversed the proportionate credit after the clearance of the exempted goods, it has to be held as if no credit was ever availed by them. In such a scenario I deem it fit to set aside the impugned orders and remand the matters to original adjudicating authority for fresh consideration. Inasmuch as the matter stands remanded,*

*other issues would also be re-considered by the adjudicating authority.*

4.3 Adjudicating Authority in the remand proceedings observed as follows:

*"3.8 I find that the party also failed to follow the provisions of Rule 6(3A) (a) of CENVAT Credit Rule 2004, as required under the rule 6(3) (ii) of the said rule, as they did not intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-*

*(i) name, address and registration No. of the manufacturer of goods or provider of output service;*
*(ii) date from which the option under this clause is exercised or proposed to be exercised;*
*(iii) description of dutiable goods or taxable services;*
*(iv) description of exempted goods or exempted services;*
*(v) CENVAT Credit of inputs and input services lying in balance as on the date of exercising the option under this condition*

*3.9 And, they did not pay the amount of CENVAT Credit attributable to inputs used for provision of exempted goods as required under the provisions of Rule 6(3A.) (b), (d) and (e) of CENVAT Credit Rule, then they were required to follow the provisions of rule 6 (3) (i) of erstwhile CENVAT Credit rule 2004*

*3.10. I find that the party vide their reply vide letter dated 15.12.2014 as referred in the previous issued OIO dated 29.03.16, have submitted that they were maintaining separate account of the raw material used in exempted goods as well as dutiable goods. The party had submitted that no CENVAT Credit was availed by them on raw material which was used in the manufacturing of exempted goods. They also enclosed the details related to purchase of raw materials used in exempted goods as evidence that they* *were maintaining the separate records for the exempted goods. However on reconciliation of the chart and documents produced by the party with the ER-3 returns, a mismatch was noticed in the data showing purchase of raw material for exempted goods from 31.08.2010 onwards, whereas as per ER-3 they have shown to have produced quantity of exempted goods in July 2010. Thus the documents provided by them were not complete and reliable. And as such, the party vide their letter dated 29.10.2014 have reversed Rs. 36,717/- (Under Protest) on account of credit taken of service tax in respect of proportionate services of security availed in respect of exempted product.*

*(ii) In view of the above, I find that the Central Excise Audit team audited the records of the party on 16.09.14 and 16.09.14 for the period 2009-10 to 2013-14 and have pointed out the issue that the party have not been maintaining separate records of inventory of input and input services in terms of rule 6 (2) of CENVAT Credit Rules 2004, and they did not follow the procedure laid down in Rule 6(3) (ii) and Rale 5(3)A of CENVAT Credit Rules 2004 and the party contested the issue as raised by the Audit Team and have informed vide their letter 15.12.2014 (RUD-3) have submitted that they were maintaining separate account of the raw material used in exempted goods as well as dutiable goods. The party had submitted that no CENVAT Credit was availed by them on raw material which was used in the manufacturing of exempted goods. If the stand of the party is considered correct, then why the party have reversed Rs.36,717/- on account of credit taken of service tax in respect of proportionate services of SECURITY Services availed in respect of exempted product as informed by them vide their letter dated 29.10.2014 even after the completion of their audit, which confirms itself that the party has availed the credit of common input*

*services, therefore, the contention of the party is not sustainable,.*

*(iii) Further, as per the directions of the Hon'ble Tribunal as per it's Final Order No. A/70897/201 8-SM {BR} dated 15.05.2018, the opportunity of personal hearing in the matter was granted to them to defend their case as discussed above, but the party has not produce any essential/ required proof to the facts that their contention is correct except some copy of purchase and sale details and on examination of the said documents, I find that the said copy of purchase and sale details are not suffice to establish the facts, they were maintaining separate account of the raw material used in exempted goods as well as dutiable goods. Moreover, I find that the party have also emphasized on the agreement with M/s Luxor International Pvt. Ltd. New Delhi and have stated that "As per section T New Delhi and have stated that "As per section 1 of the agreement the noticee has been permitted to source directly component and raw material from such party, as are approved by Ms. Luxor International Pvt. Ltd. as per specification provided by the company. List of purchase of raw material from Ms Luxor from 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013 are enclosed herewith. The sale analysis for the period 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013 are also enclosed herewith. List of ball pen part sold to Ms. Luxor during the period 01.04.2013 to 31.03.2014 and List of ball pen sold to Ms. Luxor during 01.04.2013 to 31.03.2014 is also enclosed. Entry of ledger account of both the companies is enclosed to show that the purchase and sales transaction were genuine", As regard, the list of sale and purchase, I have already discussed in the above lines. As far as the question, of Agreement, on examination of the said agreement, I find that nothing in relation to availment of cenvat credit is referred in the said agreement whether they may avail or not, if the same is received by them.*

*(iv). In view of the above, I find that the party has nothing in reference to their claim that they were maintaining separate account of the raw material used in exempted goods as well as dutiable goods as well as no CENVAT Credit was availed by them on raw material which was used in the manufacturing of exempted goods and I find that the party is only trying their best to mislead the adjudicating authority/ department in the guise of submitting copy of documents as provided by them with their defense reply referred above, being not reliable (list of purchase/ sale of goods) until and unless submission of them with the essential documents such as copy of ledgers of Balance Sheets, Invoices and copy of other financial records in support of their claim also. Thus, the same appears to have been fabricated at later stage with intention to evade duty*

*(v). And whereas party have not been maintaining separate records of inventory of input and input services in terms of rule 6 (2) of CENVAT Credit Rules 2004, and they did not follow the procedure laid down in Rule 6(3) (ii) and Rule 6(3)A of CENVAT Credit Rules 2004, hence they were required to follow the provisions of Rule 6(3) (i) of CENVAT Credit rules 2004 i.e. they were required to pay an amount equal to 5% or 6%, as applicable as relevant time, of the value of exempted goods. As per the details (chart) provided by the party given below, during the period 2010-11 to 2013-14, as per details of value of dutiable and exempted goods provided by them, the party were required to pay an amount of Rs 17,85,239/- in terms of Rule 6(3) () of CENVAT Credit Rule, 2004 which were not paid by the party, hence recoverable under the provision of Rule 14 of CENVAT Credit Rules'2004 read with Section 1 1A(4) & 1 1A(10) of Central Excise Act, 1944.*

| *S.No.* | *Year* | *Value of exempted goods (Rs.)* | *Percentage of amount of value of the exempted services which is payable u/r 6(3)(i) of CCR 2004* | *Amt to be paid @5% or 6% (in Rs)* |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| *1* | *2010-11* | *10381670* | *5%* | *519084* |
| *2* | *2011-12* | *7008871* | *5%* | *350444* |
| *3* | *2012-13* | *3707881* | *6%* | *222473* |
| *4* | *2013-14* | *11553972* | *6%* | *693238* |
| | *Total* | *32652394* | | *1785239* |

*3.11 I further find that the party have reimbursed Rs.1,49,796/- to their client towards printing charges and sticker pasting charges. These amounts were reimbursed to client by way of credit notes issued during 2013-14. In other words the amount passed on by the party to their buyer by way of Credit notes is a reimbursement of expenses incurred by the buyer, subsequent to sale of goods and is a part of transaction value, to be determined under Section 4 of CEA 1944, and incidentally has escaped proper levy of Central Excise duty, hence is required to be recovered The party was required to pay duty on this value which comes to Rs.3,086/- which is liable to be recovered from them.*

*3.12 The party contested the views taken by the audit vide letter dated 15.12.2014 stating that_ against the job work which needed to be done by them, a part of work was done by M/s. Luxor International Ltd on behalf of them on the sold goods which was manufactured by them, hence they raised credit notes. I find that it is not sustainable and acceptable as they have incurred expenses of job work got done by M/s. Luxor International Pvt. Ltd. on the goods sold to M/s. Luxor International Ltd. The extra expenditure incurred by M/s. Luxor International Ltd on behalf of the party was subsequently compensated by the M/s. Luxor International Ltd by way of book adjustment i.e issuing of credit notes, hence this amount so compensated by way of credit notes has escaped from the valuation of goods under Section 4 of Central Excise Act 1944 at the time of removal* *of goods. This resulted in short payment of duty of Rs.3,086/- which is also liable to 'be recovered from them.*

*3.13 I further find that they have cleared goods to M/s. Associated Lighting Co. and M/s INDETESH both of NSEZ, Noida for deemed Export on payment of duty and claimed rebate thereof under Notification No.19/2004-CE(NT) dated 06.09.2004. In fact in three instances, the goods sold to above said buyer was returned back and the party accordingly availed the CENVAT Credit of duty paid earlier on such clearances, but simultaneously have also claimed rebate of the same amount, under notification ibid which has resulted in excess cash payment of rebate for Rs.30,452/- to the party, hence the amount is also liable to be recovered from them.*

*3.14 Now I proceed to Section 11 A which reads as under:*

*Section 11A- Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded-*

*(2) Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, by the reason of-*

*(a) Fraud: or*

*(b) Collusion; or*

*(c) Any willful mis-statement; or*

*(d) Suppression of facts; or*

*(e) Contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty.*

*3.15 I find that it was very well within the knowledge of the party that by not maintaining separate records they were required to reverse the credit availed at appropriate rate as laid clown in terms of Rule 6(3) (i) of CENVAT Credit Rule, 2004 but they did not disclose the relevant facts to the Department for reversing such inadmissible Cenvat* *credit. This fact came to the notice only at the time of audit and as such they have willfully suppressed the vital facts from the department and contravened the provisions of the Cenvat Credits Rules, 2004 with intent to avail inadmissible credit. Therefore extended period as provided under proviso to Section 11A (4) of the Central Excise Act, 1944 has been rightly invoked for demanding the said inadmissible Cenvat Credit of Central Excise Duty taken by them along with interest under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with section 11 A and Section 11 AB/ 11AA of the Central Excise, Act, 1944.*

*3.16 On the issue of demand of interest, I find that this issue stands settled as per many case law on the subject. It has been held time and again that the payment of interest becomes due immediately, if the due payment of duty is not made by the specified date. Reliance is placed nere on the cases of CEAT Vs CCE Mumbai-III- 2012(275) ELI 433 (Tri, Mumbai), CCE Bangalore-III Vs Presscom Products-2011 (268) ELT 344 (Karnataka) and Neptune Spin Fab Pvt. Ltd. Vs CCE Ahmadabad 2009 (241) ELT 467 (Tri Ahmd.) Once the issue about the correctness of the demand notice is concluded as above, the payment of interest thereon in terms of Section 11AA of Central excise Act 1944 respectively becomes inevitable.*

*3.17 I find that interest at the appropriate rate on the paras as discussed above is liable to be recovered under Section 11AA of the Central Excise Act, 1944 as applicable.*

*3.18 As regards the imposition of penalty the relevant provisions of Rule 15 of Cenvat Credit Rules 2004 read with Section 11 AC of the Central Excise Act 1944 are quoted as under.*

> *Rule 15 of CCR 2004 General Penalty -whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees*

*Section 11 AC- Penalty for short levy or non levy of duty in certain cases - Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of fraud, collusion or any willful mis- statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there-under with intent to evade payment of duty, the person who is liable to pay duty as determined under sub section (2) of Section 1 1A, shall also be liable to pay a penalty equal to the duty so determined.*

*3.19 I find that an equal amount of penalty can be imposed upon the party for the aforesaid contravention above in terms of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of -he Central Excise Act, 1944 under various provisions of Central Excise Act, 1944 and Central Excise Rules made there under."*

4.4 First Appellate authority has recorded findings as follows in the impugned order:

*"5. I have carefully gone through show cause notice, 0I0 as well as grounds of appeal. Impugned OIO is passed by the adjudicating authority in compliance of Hon'ble CESTAT, Allahabad, FO. dated 15.5.2018 in which, as per OIO, the Hon'ble CESTAT had observed and directed as under : "….."*

*6. From going through the aforesaid directions of the Hon'ble CESTAT, I find that matter was remanded back by the Hon'ble CESTAT to the adjudicating authority with the specific mandate to examine as to whether the appellant had maintained separate accounts in respect to of dutiable and exempted goods. I find that in the OIO it is observed by the adjudicating authority that the appellant has not produced any essential/ required proof to this effect except some copy of purchase and sale details. He has further observed that the said copy of purchase and sale details are not suffice the purpose to establish the facts that they were* *maintaining separate accounts of the raw material used in the exempted goods as well as dutiable goods. In the impugned OIO it is concluded by the adjudicating authority that mere submission of list of purchase/sale of goods is not enough until and unless appellant submits essential documents such as copy of ledgers of Balance Sheets, invoices and copy of other financial records in support of their claim.,*

*7. Now, turning my attention to the appeal memo, I find that in the appeal memo also appellant has provided a list of incoming purchases, on which according to appellant, cenvat credit has not been claimed by them. They have also submitted copy of an agreement made by them with M/s Luxor International Pvt. Limited, New Delhi which requires the appellant to source directly component and raw materials from such party, as are approved by M/s Luxor International Pvt. Limited, New Delhi.*

*8. In this regard, after assuming claim of the appellant that they had not availed cenvat credit on the said list of raw material as correct, question before me to adjudicate is as to whether the said list can be termed as maintenance of separate records in terms of Rule 6(2) of CCR 2004. In this regard, I observe that the said list of raw materials was also submitted by the appellant before the adjudicating authority who after going through the said list has categorically pointed out that a mismatch was noticed in the data showing purchase of raw material for exempted goods from 31.08.2010 onwards, whereas as per ER-3 they have shown to have produced quantity of exempted goods in July 2010. Thus the documents provided by them were not complete and reliable. And as such they had vide their letter dated 29,10.2014 have reversed Rs. 36,717/- (under protest) on account of credit taken of service tax in respect of proportionate services of security availed in respect of exempted product. It is also observed by the adjudicating* *authority that the appellant has not produce any essential/ required proof to the facts that their contention is correct except some copy of purchase and sale details and on examination of the said documents the said copy of purchase and sale details are not suffice for the purpose to establish the fact that they were maintaining separate accounts of the raw material used in exempted goods as well as dutiable goods especially due to failure of the appellant to submit essential documents such as copy of ledger of balance sheets, invoices and other financial records in support of their claim*

*9. I find myself in agreement of the aforesaid observations of the adjudicating authority and come to the conclusion that the said list of raw materials (on which as per the appellant Cenvat has not been claimed) remains a list only and cannot be termed as the "separate accounts in terms of Rule 6(2) of the CCR 2004 especially when the show cause notice specifically alleges that the appellant was availing benefit of Cenvat Credit not only on inputs but input services as well. Moreover, appellant has failed to rebut the allegation of availing credit of common input services and accordingly I find that mere furnishing a list of raw material by the appellant does not prove that during the relevant period they had indeed maintained separate account for common inputs and input services used in relation to manufacture of dutiable as well as exempted goods. Onus was on the appellant to demonstrate that the inputs for exempted goods were purchased stored, cleared 8 utilized and for this inventory was maintained separately away from the inputs which have been used in dutiable goods. The appellant has miserably failed to do so.*

*10. Further, As far as reliance of the appellant on the agreement made by them with M/s Luxor International and their contention that the show cause notice fails to mention what are the goods/raw material/ components used in* *common in manufacture of dutiable as well as exempted goods are concerned. I find that the raising of these issues at this stage are irrelevant because as per the CESTAT F.O., the question to be decided now is that whether the appellant were maintaining separate records or not in terms of Rule 6(2) of CCR, 2004 and answer to this question has already been given in negative supra. I also find that the appellant at the same time is taking two mutually antagonistic approaches in as much as on the one hand they are making averments that the department has not specified the common inputs/ services being used and in the same breath it is submitted by them that they were maintaining separate records in respect of dutiable and exempted goods Accordingly, I find no merits in the argument put forth by the appellant*

*11. As far as recovery of excess refund claim of Rs. 30,452/- is concerned find that in the impugned 010 it is categorically hold by the appellant that*

*the appellant had cleared goods to units situated at NSEZ Noida which were returned back and the appellant had availed the Cenvat Credit of duty paid earlier on such clearances but simultaneously have also claimed rebate of the same amount resulting in excess cash payment of rebate for Rs. 30,452/-. In the appeal memorandum, appellant has merely stated that the credit in question was correctly availed by them and the said amount does not relate to rebate claim. However, no supporting document/ evidence to this effect is submitted by the appellant. Therefore, I find no reason to take this contention of the appellant on face value and accordingly find no reason to interfere on this account also.*

*12. In view of the foregoing discussion and findings, I find no reason to interfere with the impugned OIO and accordingly dismiss the present appeal."*

4.5 Though it is settled law that the appellate authority should not reverse the identical finding of fact recorded by the two subordinate authorities viz adjudicating authority and first appellate authority, still to determine the correctness of the claim made by the appellant, I verified the records produced by the appellant on sample basis for the month of December 2013 in the presence of counsel of Appellant during the hearing on 12.09.2024. These facts are recorded in the order sheet of the date which is reproduced below:

*"ORDER*

*Have heard both sides. On going through the records submitted by the Appellant with regards to separate maintenance of the accounts it is observed that for the Month of December 2013 available on Page No.71 in respect of the documents against which CENVAT Credit has been taken the same documents also find mentioned on Page No.232 wherein as per the submissions of the Appellant the credit has not been taken. On being pointed out learned counsel seeks time to explain above entries/figures in both the charts.*

*2. Taking note of the request made matter is adjourned. However, it is made clear if no plausible proper explanation is furnished by the Appellant/Appellant's counsel on the next date of hearing and adverse inference can be drawn against the Appellant. List on 03.10.2024."*

4.6 On next date of hearing i.e. on 03.10.2024, the counsel for appellant failed to provide any explanation and sought adjournment. The order sheet of 03.10.2024 is reproduced below:

*"ORDER*

*Counsel for the Appellant requesting for an adjournment for what so ever reasons cannot be considered at this moment of time for the reason that matter was heard on 12.09.2024 and specific query was made and it was made clear that* *adverse inference can be drawn taking note of the submissions made today.*

*2. Heard both sides. Order Reserved. Both the sides are at liberty to file written submissions vis-à-vis today's date of hearing within a week from today. In case no submissions are received in a week's time, matter will be decided on the basis of available records.*

4.6 Appellant didn't filed any submissions even after being allowed time to explain the discrepancies noted during the hearing on 12.09.2023. Thus I have reason to conclude that the appellant has no submission to make in this regards.

4.7 The fact that appellant was not maintaining separate records of the inputs used in manufacture of dutiable and exempted goods is well established by the records. The scanned copy of the documents verified on sample basis for the month of December 2013, are reproduced below:

LASER MICROMED DISPOSABLES
D-90, HOSIERY COMPLEX, PHASE-II EXTENSION
NOIDA-201305 (UP)

EEC NO. AAIPP6067GXM002

December-13

Central Excise Series No.
Form R.G. 23 A - Part - II
ENTRY BOOK OF DUTY CREDIT

DUPLICATE
TRIPLICATE

| S.No | Date | Opening balance of duty in Credit: Basic Excise duty&Addl. Duty of Customs equivalent to basic Ex. duty | Other Duties (Specify) CESS | Other Duties (Specify) S & H CESS | Fresh Credit Allowed (4to6): AR1/GP1 other approved document Bill of Entry No. | Date | EC Code Supplier | Range/ Division/ Customs House from where received | Folio & Entry No.In Part I |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3(a) | 3(b) | 3( C) | 4(a) | | 4(b) | 5 | 6 |
| 1 | 1-Dec-13 | 1378527.26 | 26505.99 | 16629.71 | 6051 | 01-12-13 | AAACD0500FXD006 | | |
| 2 | | | | | 131 | 02-12-13 | AAIPB6578L E D 001 | | |
| 3 | | | | | 130 | 02-12-13 | AAIPB6578L E D 001 | | |
| 4 | | | | | 6117 | 05-12-13 | AAACD0500FXD006 | | |
| 5 | | | | | 234 | 06-12-13 | AAPCS0889PEM001 | | |
| 6 | | | | | 135 | 06-12-13 | AAIPB6578L E D 001 | | |
| 7 | | | | | 136 | 07-12-13 | AAIPB6578L E D 001 | | |
| 8 | | | | | 137 | 07-12-13. | AAIPB6578L E D 001 | | |
| 9 | | | | | 138 | 08-12-13 | AAIPB6578L E D 001 | | |
| 10 | | | | | 139 | 08-12-13 | AAIPB6578L E D 001 | | |
| 11 | | | | | 140 | 09-12-13 | AAIPB6578L E D 001 | | |
| 12 | | | | | 143 | 10-12-13 | AAIPB6578L E D 001 | | |
| 13 | | | | | 141 | 10-12-13 | AAIPB6578L E D 001 | | |
| 14 | | | | | 6389 | 18-12-13 | AAACD0500FXD006 | | |
| 15 | | | | | 3626 | 24-12-13 | AACCP3442QEM004 | | |
| 16 | | | | | 168 | 24-12-13 | AAIPB6578L E D 001 | | |
| 17 | | | | | 167 | 24-12-13 | AAIPB6578L E D 001 | | |
| 18 | | | | | 166 | 24-12-13 | AAIPB6578L E D 001 | | |
| 19 | | | | | 170 | 25-12-13 | AAIPB6578L E D 001 | | |
| 20 | | | | | 169 | 25-12-13 | AAIPB6578L E D 001 | | |
| 21 | | | | | LMD-012 | 02-12-13 | AANPK9250DSD001 | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | TOTAL | | |

| S.No | Fresh Credit Allowed / Amount of duty credited: Basic Excise Duty | Other Duties (Specify) CESS | Other Duties (Specify) S & H CESS | Total credit (3) + (7) available: Basic Excise duty&Addl. Duty of Customs equivalent to basic Excise duty | Other Duties (Specify) CESS | Other Duties (Specify) S & H CESS | Debit (9 To 11): AR1/ Invoice other approved document/ No.& Date | CET Sub heading | CE Code of the buyer | Basic Excise Duty | Other Duties (Specify) CESS | Other Duties (Specify) S & H CESS | Balance of Credit: Basic Excise Duty | Other Duties (Specify) | Other Duties (Specify) S & H CESS | Central Excise Officer Initials | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 7(a) | 7(b) | 7© | 8(a) | 8(b) | 8© | 9(a) | 9(b) | 9(c ) | 10 | 11 | 11a | 12(a) | 12(b) | 12© | 13 | 14 |
| 1 | 1198.00 | 0.00 | 0.00 | 1379725.26 | 26505.99 | 16629.71 | | | | | | | | | | | |
| 2 | 30000.00 | 600.00 | 300.00 | 1409725.26 | 27105.99 | 16929.71 | | | | | | | | | | | |
| 3 | 29280.00 | 586.00 | 293.00 | 1439005.26 | 27691.99 | 17222.71 | | | | | | | | | | | |
| 4 | 4398.00 | 88.00 | 44.00 | 1443403.26 | 27779.99 | 17266.71 | | | | | | | | | | | |
| 5 | 5726.00 | 115.00 | 57.00 | 1449129.26 | 27894.99 | 17323.71 | | | | | | | | | | | |
| 6 | 30000.00 | 600.00 | 300.00 | 1479129.26 | 28494.99 | 17623.71 | | | | | | | | | | | |
| 7 | 5814.00 | 116.00 | 58.00 | 1484943.26 | 28610.99 | 17681.71 | | | | | | | | | | | |
| 8 | 15000.00 | 300.00 | 150.00 | 1499943.26 | 28910.99 | 17831.71 | | | | | | | | | | | |
| 9 | 27750.00 | 555.00 | 277.00 | 1527693.26 | 29465.99 | 18108.71 | | | | | | | | | | | |
| 10 | 15000.00 | 300.00 | 150.00 | 1542693.26 | 29765.99 | 18258.71 | | | | | | | | | | | |
| 11 | 15000.00 | 300.00 | 150.00 | 1557693.26 | 30065.99 | 18408.71 | | | | | | | | | | | |
| 12 | 7500.00 | 150.00 | 75.00 | 1565193.26 | 30215.99 | 18483.71 | | | | | | | | | | | |
| 13 | 7500.00 | 150.00 | 75.00 | 1572693.26 | 30365.99 | 18558.71 | | | | | | | | | | | |
| 14 | 4398.00 | 88.00 | 44.00 | 1577091.26 | 30453.99 | 18602.71 | | | | | | | | | | | |
| 15 | 1663.00 | 33.00 | 16.00 | 1578754.26 | 30486.99 | 18618.71 | | | | | | | | | | | |
| 16 | 15000.00 | 300.00 | 150.00 | 1593754.26 | 30786.99 | 18768.71 | | | | | | | | | | | |
| 17 | 7500.00 | 150.00 | 75.00 | 1601254.26 | 30936.99 | 18843.71 | | | | | | | | | | | |
| 18 | 13125.00 | 262.00 | 131.00 | 1614379.26 | 31198.99 | 18974.71 | | | | | | | | | | | |
| 19 | 7500.00 | 150.00 | 75.00 | 1621879.26 | 31348.99 | 19049.71 | | | | | | | | | | | |
| 20 | 14760.00 | 295.00 | 147.00 | 1636639.26 | 31643.99 | 19196.71 | | | | | | | | | | | |
| 21 | 4350.00 | 87.00 | 44.00 | 1640989.26 | 31730.99 | 19240.71 | BILL NO. | | | | | | | | | | |
| | | | | 1640989.26 | 31730.99 | 19240.71 | 360 TO 432 | | | | | | | | | | |
| | | | | 1527693.26 | 29465.99 | 18108.71 | Dec-13 | | | | | | | | | | |
| TOTAL | 262462.00 | 5225.00 | 2611.00 | | | | | | | 11245 | 224 | 113 | 1516448.26 | 29241.99 | 17995.71 | | |

SUMMERY OF ACCOUNTS FOR THE MONTH DEC - 2013

| | | Excise Duty | Edu.Cess | S & H Cess |
|---|---|---|---|---|
| Opening Balance | | 1378527.26 | 26505.99 | 16629.71 |
| ADD : Credit for the Month | | 262462.00 | 5225.00 | 2611.00 |
| | | 1640989.26 | 31730.99 | 19240.71 |
| LESS : Debit of the Month | | 11245.00 | 224.00 | 113.00 |
| Closing Balance | | 1629744.26 | 31506.99 | 19127.71 |

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**LASER MICROMED DISPOSABLES, D-90, H.C. , PHASE-II Extn, Noida, 201305, U.P.**

**LIST OF INCOMING PURCHASES ON WHICH CENVAT NOT CLAIMED**

Voucher Series : All — From 1-4-2010 to 31-3-2014

| Date | Vch/Bill No | NAME | Item Details | Qty. | Unit | Price | Amount |
|---|---|---|---|---|---|---|---|
| | | | Aug-10 | | | | |
| 23-08-2010 | 01636 | LUXOR | HIPH SH 825/302 NAT SURPREM | 500 | Kgs. | 83.82 | 41,910 |
| 23-08-2010 | 01636 | LUXOR | PP H 200 MA/MG REL/BASELL NAT | 500 | Kgs. | 80.00 | 40,000 |
| 23-08-2010 | 01636 | LUXOR | M BATCH 7285 PP NEW (DICTRO)FI YEL | 5 | Kgs. | 268.00 | 1,340 |
| 23-08-2010 | 01636 | LUXOR | M BATCH 7286 PP NEW (DICTRO)FI GRN | 5 | Kgs. | 265.00 | 1,325 |
| 23-08-2010 | 01636 | LUXOR | M BATCH 7287 PP NEW (DICTRO) FI ORG | 5 | Kgs. | 310.00 | 1,550 |
| 23-08-2010 | 01636 | LUXOR | M BATCH 7288 PP NEW (DICTRO) FI BLU | 5 | Kgs. | 200.00 | 1,000 |
| 23-08-2010 | 01636 | LUXOR | M BATCH 701 (DICTRO) JET BLK | 15 | Kgs. | 74.00 | 1,110 |
| 28-08-2010 | 01648 | LUXOR | M BATCH 7285 PP NEW (DICTRO)FI YEL | 10 | Kgs. | 268.00 | 2,680 |
| 28-08-2010 | 01648 | LUXOR | M BATCH S 7253 HIPS (Dictro) FL BLUE | 5 | Kgs. | 215.00 | 1,075 |
| 28-08-2010 | 01648 | LUXOR | M BATCH S 7252 HIPS (Dictro) FL GREEN | 5 | Kgs. | 620.50 | 3,103 |
| 28-08-2010 | 01648 | LUXOR | M BATCH S 7251 HIPS (Dictro) FL YELLOW | 5 | Kgs. | 599.00 | 2,995 |
| 28-08-2010 | 01648 | LUXOR | M BATCH 7254 HIPS (Dictro) FL ORG | 5 | Kgs. | 617.00 | 3,085 |
| 28-08-2010 | 01648 | LUXOR | Polythene Bag Size 18*24 Inch Guage 300 | 10 | Kgs. | 101.00 | 1,01 |
| 30-08-2010 | 01653 | LUXOR | PP H 200 MA/MG REL/BASELL NAT | 500 | Kgs. | 76.20 | 38,10 |
| 30-08-2010 | 01653 | LUXOR | HIPH SH 825/302 NAT SURPREM | 500 | Kgs. | - | - |
| | | | Wednesday, September 01, 2010 | | | | |
| 01-09-2010 | 01658 | LUXOR | M BATCH ( JASS) SUP WHT | 10 | Kgs. | 117.00 | 1,170 |
| 01-09-2010 | 01658 | LUXOR | M BATCH 7306/961PP FL GRN | 5 | Kgs. | 267.00 | 1,335 |
| 01-09-2010 | 01658 | LUXOR | M BATCH 1562 A FL PINK | 5 | Kgs. | 524.00 | 2,620 |
| 03-09-2010 | 01661 | LUXOR | HIPH SH 825/302 NAT SURPREM | 1,000 | Kgs. | 84.00 | 84,000 |
| 03-09-2010 | 01661 | LUXOR | PP H 200 MA/MG REL/BASELL NAT | 500 | Kgs. | 80.00 | 40,000 |
| 03-09-2010 | 01661 | LUXOR | M BATCH 701 (DICTRO) JET BLK | 25 | Kgs. | 79.00 | 1,975 |
| 03-09-2010 | 01661 | LUXOR | M BATCH 7272 PP (Dictro) FL YEL | 5 | Kgs. | 420.00 | 2,100 |
| 04-09-2010 | 01664 | LUXOR | M BATCH ( JASS) SUP WHT | 10 | Kgs. | 122.50 | 1,225 |
| 04-09-2010 | 01664 | LUXOR | SINK Free Hydro.L.C.906/201(ALFA ) NAT | 10 | Kgs. | 162.25 | 1,623 |
| 06-09-2010 | 1666 | LUXOR | M BATCH 7287 PP NEW (DICTRO) FI ORG | 5 | Kgs. | 320.75 | 1,604 |
| 06-09-2010 | 1666 | LUXOR | M BATCH 7288 PP NEW (DICTRO) FI BLU | 5 | Kgs. | 211.60 | 1,058 |
| 06-09-2010 | 1666 | LUXOR | Polythene Bag Size 18*24 Inch Guage 300 | 20 | Kgs. | 107.00 | 2,140 |
| 07-09-2010 | 01668 | LUXOR | M BATCH 6530 (Dictro)red | 2 | Kgs. | 253.25 | 507 |
| 07-09-2010 | 01671 | LUXOR | PP H 200 MA/MG REL/BASELL NAT | 500 | Kgs. | 80.00 | 40,000 |
| 07-09-2010 | 01671 | LUXOR | M BATCH 701 (DICTRO) JET BLK | 25 | Kgs. | 78.85 | 1,971 |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| [illegible]0-11-13 | BILL NO. 9208 | LUXOR | TERLUX 281[illegible]R BASF NAT/ ABS TPT. "TORAY" | 7[illegible] | Kgs. | 211.0000/KG | 147,7[illegible] |
| 30-11-13 | BILL NO. 9208 | LUXOR | PP H [illegible]MG REL/ BASELL NAT | [illegible] | Kgs. | 118.6200/KG | 59,310 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M BATCH BLACK 54839 (SAN) P MATE | 12 | Kgs. | 323.1900/KG | 3,878 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M BATCH BLUE (SAN) 54248 P. MATE | 10 | Kgs. | 314.4900/KG | 3,145 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M. BATCH T. BLUE (SAN) 54235 P. MATE | 5 | Kgs. | 348.8000/KG | 1,744 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M BATCH RED (SAN) 54227 P. MATE | 10 | Kgs. | 331.6400/KG | 3,316 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M BATCH GREEN 27657 (SANFORD) | 1 | Pcs. | 336.2200/PCS | 336 |
| 30-11-13 | BILL NO. 9208 | LUXOR | M.BATCH BLUE (PP) 29796 P. MATE | 10 | Kgs. | 327.0700/KG | 3,271 |
| 30-11-13 | BILL NO. 9199 | LUXOR | BLISTER 04 CT 300RT BALL PEN P MATE | 10,915 | Pcs. | 1.3700/PCS | 14,954 |
| 30-11-13 | BILL NO. 9199 | LUXOR | REFILL SWORDFISH BP 1.0MM TC-BK CLR PIPE | 33,600 | Pcs. | 0.8100/PCS | 27,216 |
| 30-11-13 | BILL NO. 9205 | LUXOR | HDPE 50 MA 180 MFI IPCL NAT | 200 | Pcs. | 115.5000/PCS | 23,100 |
| 30-11-13 | BILL NO. 9205 | LUXOR | PP SEMI RECYCLED EXTRUDED BLACK | 350 | Kgs. | 40.0000/KG | 14,000 |
| 30-11-13 | BILL NO. 9205 | LUXOR | M BATCH (JASS) SUP WHT | 10 | Pcs. | 174.9700/PCS | 1,750 |
| 30-11-13 | BILL NO. 9205 | LUXOR | M BATCH BLACK 54839 (SAN) P MATE | 5 | Kgs. | 323.1900/KG | 1,61[illegible] |
| 30-11-13 | BILL NO. 9205 | LUXOR | M BATCH BLUE (SAN) 54248 P. MATE | 10 | Kgs. | 314.4900/KG | 3,14[illegible] |
| | | | Dec-13 | | | | |
| 02/12/2013 | BILL NO. 131 | RAMESH F | POLYSTYROL 476 L | 2,000 | Kgs. | 135.5500/KG | 271,10[illegible] |
| 02/12/2013 | BILL NO. 130 | RAMESH F | GPPS | 2,000 | Kgs. | 129.9208/KG | 259,842 |
| 06-12-13 | BILL NO. 9220 | LUXOR | SAN AS 2300 NAT BAYER/ 82TR "LG" / IMG-1000 | 1,000 | Kgs. | 155.0000/KG | 155,000 |
| 06-12-13 | BILL NO. 9220 | LUXOR | TERLUX 2812TR BASF NAT/ ABS TPT. "TORAY" | 200 | Kgs. | 211.0000/KG | 42,200 |
| 06-12-13 | BILL NO. 9220 | LUXOR | DELRIN F30-03 JUPITAL NAT MITSUBLSHL EN | 250 | Kgs. | 116.0000/KG | 29,000 |
| 06-12-13 | BILL NO. 9220 | LUXOR | PP SEMI RECYCLED EXTRUDED BLACK | 350 | Kgs. | 40.0000/KG | 14,000 |
| 06/12/2013 | BILL NO. 135 | RAMESH F | HIPS | 2,000 | Kgs. | 132.5500/KG | 265,100 |
| 07-12-13 | BILL NO. 9233 | LUXOR | SAN AS 2300 NAT BAYER/ 82TR "LG" / IMG-1000 | 500 | Kgs. | 155.0000/KG | 77,500 |
| 07-12-13 | BILL NO. 9233 | LUXOR | TERLUX 2812TR BASF NAT/ ABS TPT. "TORAY" | 500 | Kgs. | 211.0000/KG | 105,500 |
| 07-12-13 | BILL NO. 9233 | LUXOR | PP H 200 MA/MG REL/ BASELL NAT | 500 | Kgs. | 118.6200/KG | 59,310 |
| 07-12-13 | BILL NO. 9233 | LUXOR | HDPE 50 MA 180 MFI IPCL NAT | 100 | Pcs. | 115.5000/PCS | 11,550 |
| 07-12-13 | BILL NO. 9233 | LUXOR | M. BATCH D. GREEN (PP) 29799 P. MATE | 5 | Kgs. | 371.6700/KG | 1,858 |
| 07-12-13 | BILL NO. 9233 | LUXOR | M BATCH BLUE 27815PP (SANFORD) | 15 | Kgs. | 265.3200/KG | 3,980 |
| 07/12/2013 | BILL NO. 136 | RAMESH F | POLYSTYROL 495 F | 350 | Kgs. | 136.8913/KG | 47,912 |
| 07/12/2013 | BILL NO. 137 | RAMESH F | POLYSTYEOL 147 F | 1,000 | Kgs. | 132.5500/KG | 132,550 |
| 08/12/2013 | BILL NO. 138 | RAMESH F | POLYSTYEOL 147 F | 1,850 | Kgs. | 132.5500/KG | 245,218 |
| 08/12/2013 | BILL NO. 139 | RAMESH F | POLYSTYEOL 147 F | 1,000 | Kgs. | 132.5500/KG | 132,550 |
| 09-12-13 | BILL NO. 9239 | LUXOR | REFILL SWORDFISH BP1.0 MM TC-PUR CLR PIPE | 11,200 | Pcs. | 0.8100/PCS | 9,072 |
| 09-12-13 | BILL NO. 9239 | LUXOR | REFILL SWORDFISH BP 1.0MM TC-T -BL CLR PIPE | 11,200 | Pcs. | 0.8100/PCS | 9,072 |
| 09-12-13 | BILL NO. 9240 | LUXOR | CLIP SWORDFISH BALL PEN | 394,000 | Pcs. | 0.6100/PCS | 240,340 |
| 09-12-13 | BILL NO. 9240 | LUXOR | SPRING SWORDFISH BALL PEN | 172,800 | Pcs. | 0.06/ pc | 10,368 |
| 09-12-13 | BILL NO. 9240 | LUXOR | SPRING SWORDFISH BALL PEN | 552,200 | Pcs. | 0.06/ pc | 33,132 |
| 09-12-13 | BILL NO. 9238 | LUXOR | REFILL SWORDFISH BP 1.0MM TC-BK CLR PIPE | 156,800 | Pcs. | 0.8100/PCS | 127,008 |

From perusal of the said documents it is evident that appellant has taken CENVAT credit against the documents in respect of which he claims that no credit was taken. The submission of the appellant in this respect is not supported by the said documents and is totally perverse, and appellant has failed to provide any explanation for the same.

4.8 In view of above finding of fact, I do not find any reason to interfere with the impugned order.

5.1 Appeal is dismissed.

(Pronounced in open court on-04 February, 2025)

**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

*akp*