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

APPEAL No. E/70433/2017-EX[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-062-16-17 dated 16/03/2017 passed by Commissioner of Central Excise, Kanpur)

M/s Kushal Foods Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri M.H. Patil (Advocate) &
Shri Nitin N. Mehta (Consultant) for Appellant
Shri Mohd Altaf (Assistant Commissioner) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 10/01/2019
Date of Decision : 10/01/2019

FINAL ORDER NO **70051 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by learned counsels Shri M.H. Patil, Advocate & Shri Nitin N. Mehta, Consultant for the Appellant and learned AR Shri Mohd Altaf, Assistant Commissioner for the Revenue we note that the appellants were manufacturers of biscuits and some of the varieties of biscuits were sold at MRP of less than Rs.100 per kg MRP and in respect of the same appellants were availing exemption from Excise Duty. Further, appellants were also manufacturing biscuits where MRP was more than Rs.100 per kg and such biscuits were chargeable to Central Excise Duty. Appellants were using various inputs for the manufacture of biscuits and they were availing Cenvat Credit of Central Excise Duty paid on sugar. Sugar was used both in exempted and dutiable goods and, therefore, it appeared to Revenue that under Rule 6(3)(i) of Cenvat Credit Rules, 2004 appellant should pay 5% or 6% of the value of exempted goods under Rule 14 of Cenvat Credit Rules 2004.

2. After hearing both the sides and on perusal of records we note that the appellant was availing Cenvat Credit of only one input i.e. sugar. Further appellant was availing Cenvat Credit of duty paid on sugar only in respect of such quantity of sugar which was going into manufacture of dutiable goods. The finding by the Original Authority is that since the appellants were not maintaining separate account of inputs going into dutiable and exempted goods the appellants were required to pay demanded amount. We note that the Original Authority is not disputing that Cenvat Credit was availed only on such quantity of sugar which has gone into manufacture of goods on which duty was being paid. We note here that learned Commissioner has taken recourse to sub Rule (2) of Rule 6 of Cenvat Credit Rules without following the provisions of sub Rule (1) of Rule 6 of Cenvat Credit Rules which provide that the Cenvat Credit of duty paid on inputs is not

admissible as Cenvat Credit where the final products are exempted. Further, sub Rule (2) of Rule 6 provides that when Cenvat credit is taken on common inputs and input services which are going into two streams one exempted or other dutiable then assessee are required to maintain separate accounts. Further as per sub Rule (3) of Rule 6, if such separate accounts are not maintained then assessee has to pay amount as per Rule 6(3)(i) ibid. Here the provision of sub Rule (1) of Rule 6 of Cenvat Credit Rules is applicable. Therefore, there was no need to resort to provisions of sub Rule (2) or (3) of Rule 6 ibid. We, therefore, do not find any merit in Revenue's case.

3. We, therefore, set aside the impugned order and allow the appeal.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit