CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70944 of 2018

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1791-17-18 dated 28/02/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

M/s Agrimas Chemicals Ltd. .....**Appellant**

(A-73, Industrial Area Sikandrabad Distt.-Bulandshahr,

Uttar Pradesh-203205)

VERSUS

The Assistant Commissioner Central GST &

Central Excise, Greater Noida-III ....**Respondent**

(Plot No.3, 3rd Floor, Wegmans Business Park, KP-III,

Greater Noida-201308)

APPEARANCE:

Shri Naveen Agarwal, Manager Accounts, for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 71963 / 2019

Date of Hearing : 02 December, 2019
Date of Decision : 02 December, 2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Naveen Agarwal employee of the appellant and Shri Gyanendra Kumar Tripathi learned A.R. on behalf of the Revenue, I note that the appellants were engaged in the manufacture of Pesticides and they were availing facility of Cenvat credit and their head office was engaged in trading of the goods where the common input services were utilized for trading and manufacturing. According to the provisions of Sub-rule (3) of

Rule 6 of Cenvat Credit Rules for the period from April, 2015 to September, 2015 appellant reversed Cenvat credit of Rs.1,62,718/- propionate to the input services utilized for trading. However, Revenue has issued statement of demand to the appellant for the period from April, 2015 to September, 2015. The said statement of demand was subsequent to the earlier show cause notice which was for the period from April, 2011 to March, 2015. I note that this Tribunal through Final Order No.71137/2019 dated 19/06/2019 held that demand against the appellant was not sustainable the period from April, 2011 to March, 2015. For ready reference I reproduce Para-6 of the said Final Order dated 19/06/2019 as under:-

> *"6. We note that the Adjudicating Authority is not disputing the fact of reversal of Cenvat credit availed on common input services by the head office. He is also not doubting the correctness of the said reversal. The said reversal has been made by the head office alongwith payment of interest of Rs.6,98,314/- lakhs. The effect of said reversal is as if no credit was availed by the appellant in respect of the common services which were utilized for trading of the goods. In such a scenario, further demand of a particular percentage of the value of the traded goods in terms of Rule 6(3) is neither in accordance with the provisions of Cenvat Credit Rules nor with the settled principle of law. It stands held by various decisions of the judicial and quasi-judicial authorities that in case of reversal of proportionate credit attributable to the exempted goods/services, further demand in terms of Rule 6(3) is unsustainable. As such, we find no reasons to uphold the impugned order. The same is accordingly set aside and appeal allowed with consequential relief to the appellant."*

2. By following the precedent decision of this Tribunal, I set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks