

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

REGIONAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 1549 OF 2012

(Arising out of Order-in-Original No. 14/2012 dated 30.03.2012
passed by the Commissioner of Central Excise , Bangalore-II.)

SYNTHITE INDUSTRIES LTD

Kumarapatnam – 581123
Near Harihar, Haveri District

Appellant

VERSUS

**COMMISSIONER OF CENTRAL EXCISE,
BANGALORE-IV**

Commissionerate, Central Revenue Buildings,
Bangalore – 560 001.

Respondent

Appearance:

Present for the Appellant :Mr. B.N.Gururaj, Advocate

Present for the Respondent: Mr. Maneesh

CORAM:

HON'BLE MR. D. M. MISRA, MEMBER (JUDICIAL)

HON'BLE MR. R. BHAGYA DEVI, MEMBER (TECHNICAL)

DATE OF HEARING: 21.05.2024

DATE OF DECISION: 21.05.2024

FINAL ORDER No. 20468/2024

This is an appeal filed against Order-In-Original No. 14/2012
passed by the Commissioner Central Excise, Bangalore.

2. Briefly stated that the facts of the case are that appellant were
manufacturer of Oleoresin Paprika, falling under chapter sub heading
3301 and other products during the relevant period. They have
availed CENVAT credit on common input services used in the
manufacture of exempted and dutiable products. The Audit party of

the Revenue objected that during the course of manufacture of Oleoresin Paprika, chilli seeds emerges; which are later cleared without payment of duty and that though they have taken CENVAT credit on common input services, and not maintained separate records; therefore, they were required to discharge 10% value of the exempted product viz chilli seeds in accordance with rule 6(3)(i) CCR, 2004.

3. Consequently, Show cause notice issued to them on 20.12.2011 and later corrigendum demanding, a total amount of Rs. 3,04,51,326/- being 10%/5% of the value of the exempted products, namely, chilli seeds classifiable under tariff heading 09042090, for the period 2007-2008 to 2011-2012 with interest and penalty. On Adjudication, the demand is confirmed with interest and penalty. Hence, the present appeal.

4. At the outset the Learned Advocate for the appellant has submitted that the chilli seeds are arised during the course of manufacture is a byproduct, hence, Rule 6 of CCR, 2004 is not applicable to the present case. In support, he referred to the judgment of Hon'ble Supreme Court in the case of **Union of India Vs. M/s. DSCL Sugar Ltd [2015 (322) E.L.T. 769 (SC)]**.

5. Further, he submits that before issuance of show cause notice the proportionate credit attributable to exempted final product viz. chilli seeds amounting to Rs. 2,26,436/- along with 24% interest amounting to Rs. 97,627 has been paid on 25.01.12. It is his contention that therefore demanding 5%/10% of the value of the exempted product cannot be sustained in view of the retrospective amendment to the said Rule vide section 72 and 73 of the Finance

Act, 2010 and the Notification was issued in 2016. Therefore, the present appeal be allowed.

6. Learned AR for the Revenue reiterated the findings of the Learned Commissioner Appeals, Bangalore.

7. Heard both sides, and perused of records. We find that the short issue involved for determination is whether 5%/10% of the value of the exempted products viz. chilli seeds be leviable, when separate accounts were not maintained during the relevant period, as per Rule 6(3)(i) of CCR, 2004.

8. Undisputedly, the appellant had reversed the proportionate CENVAT credit attributable to exempted products amounting Rs. 2,26,436/- with interest before issuance of show cause notice. Thus demanding 5%/10% value of the exempted products cannot be sustained in view of the judgment of this Tribunal had in the case of M/s. Parle Products Private Limited Vs. The Commissioner of Central Excise in Final Order No. 20383/2024, wherein it is observed as follows:

“8. Since the appellant has reversed the credit with interest availed on inputs and input services attributable to exempted products, accordingly in view of the series of judgments referred to by the learned advocate for the appellant and also in view of the retrospective amendment to the relevant Cenvat Credit Rules, 2004 vide Section 72 and 73 of Finance Act, 2010 and Notification No. 13/2016 - CE(NT) dated 01.03.2016, the demand of 10% of the value of the exempted goods confirmed by the learned Commissioner in the impugned order cannot be sustained.”

9. In the result, the impugned order is set aside with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Sasidhar