CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 813 of 2011

[Arising out of Order-in-Appeal No. 45/2011 dated 10.01.2011 passed by the Commissioner of Central Excise, (Appeals-II) Bangalore]

Featherlite Office Systems Pvt. Ltd.
Sy. No. 83 & 88/1, Khata No. 150
Hejjala Circle, Hejjala Post,
25Km of Mysore Road
Bangalore - 562 109 ....**Appellant**

VERSUS

Commissioner of Central Excise, Bangalore - III
Post Box No. 5400
Queens Road
Central Revenues Building
Bangalore – 560 001 ....**Respondent**

Appearance:

None for the Appellant
Mr. Sanjay Venkat, Authorized Representative for the Respondent

Coram:
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 21104 / 2025</u>

Date of Hearing: 20.01.2025
Date of Decision: 18.07.2025

Per: Pullela Nageswara Rao

This appeal was filed against the Commissioner (Appeals) Order-in-Appeal No. 45/2011 dated 10.01.2011.

2. The facts in brief are the appellant, M/s. Featherlite Office Systems Pvt. Ltd., manufactures products for home consumption and clears on payment of duty and also exports some products without

payment of duty against Letter of Undertaking (LUT). The appellant also cleared products to SEZ units and SEZ Developers under Letter of Undertaking without payment of duty and was availing cenvat credit on inputs used in the manufacture of final products in terms of the provisions of Cenvat Credit Rules, 2004. Rule 6 of the Cenvat Credit Rules deals with the obligation of manufacturers of both dutiable and exempted goods, sub-rule (1) stipulates that credit shall not be allowed on inputs used in the manufacture of exempted goods except as provided under sub-rule (2) of Rule 6 which stipulates that manufacturer of both dutiable and exempted goods shall maintain account for receipt, consumption and inventory of input and input services meant for use in the manufacture of dutiable final products and the quantity of input meant for use in the manufacture of exempted goods and take cenvat credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods. If such manufacturer opting not to maintain separate accounts as per Rule 6(2) of Cenvat Credit Rules, 2004 and they are required to follow the procedure laid down under Rule 6(3) of Cenvat Credit Rules, 2004, for the period prior to 01.04.2008 the assessee is required to pay 10% of the total price charged by them for sale of such goods at the time of their clearance from the factory and for the period from 01.04.2008 onwards as per Rule 6(3)(i) they are required to pay 10% of an amount equivalent to 10% of the value of exempted goods or shall pay an amount equivalent to cenvat credit attributable to input or input services used in or in relation to the manufacture of exempted goods subject to the procedure specified in Rule 6(3A) of Cenvat Credit Rules, 2004 and to adopt this procedure the manufacturer has to exercise such option for all exempted goods and the option exercised shall not be withdrawn during the remaining part of the financial year. Rule 6(6) of Cenvat Credit Rules, 2004 does not allow the benefit of sub-rules (1), (2), (3) and (4) of Rule 6 in respect of certain categories of clearances of goods and thus does not allow cenvat credit in respect of inputs used in the manufacture of such goods irrespective of the fact whether duty is paid on final product or not covering the period before or after 01.04.2008, one such category is clearance of final products without payment of duty to *'units'* in SEZ and this rule does not cover clearances made without payment of duty to SEZ *'Developer'***.** Accordingly, if a manufacturer clears goods to SEZ developer without payment of duty and avails credit on input or input services used in the manufacture of final goods in contravention of Rule 6(1) and 6(2) of the Cenvat Credit Rules, 2004, then that manufacturer is required to pay an amount equal to 10% of the value of exempted goods before 01.04.2008 and after 01.04.2008 the manufacturer is required to pay 10% of the value of the exempted goods or pay an amount equivalent to credit attributable to inputs used in the manufacture of exempted goods. The appellant during the period April 2008 to October 2008 cleared goods without payment of duty to SEZ developers; availed credit on inputs used in the manufacture of final goods cleared to SEZ developers; did not maintain separate accounts in respect of the inputs used in the manufacture of final goods cleared to SEZ developers without payment of duty, they did not reverse an amount equal to 10% of the price of the exempted goods cleared prior to 01.04.2008; and for the period after 01.04.2008 they did not exercise the option to pay an amount equivalent to credit attributable to inputs used in the manufacture of goods cleared to SEZ developer and also did not pay an amount equivalent to 10% of the value of the exempted goods. Consequently, they have violated Rule 6(1) 6(2) and 6(3) of the Cenvat Credit Rules, 2004, hence a notice was issued for demand of an amount of Rs. 49,56,030/- along with interest under Section 11A and Section 11AB of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004. Penalty was also proposed under Rule 15(1) of the Cenvat Credit Rules, 2004. The adjudicating authority confirmed the demand along with interest and on appeal before Commissioner (Appeals), the order of the adjudicating authority was upheld, and the appeal was rejected. Aggrieved by the impugned order this appeal is filed before this Tribunal.

3. The Learned Chartered Accountant (CA) for the appellant submitted that prior to 31.12.2008, the Cenvat Credit Rules, 2004 have exempted the provisions of sub-rule 6 for the goods removed without payment of duty or cleared to a '**unit'** in a Special Economic Zone and

by amendment to Cenvat Credit Rules vide Notification No. 50/2008-CE(NT) dated 31.12.2008, Sub-rule 6 has been substituted. The appellant submitted that in the case **Commissioner of Central Ex. & ST, Bangalore Vs. Fosroc Chemicals (India) Pvt. Ltd. – 2015 (318) ELT 240 (Kar.)** the Hon'ble High Court of Karnataka held that the effect of the substitution of Rule 6 of Cenvat Credit Rules, 2004 is clarificatory in nature and that the SEZ developer is included during the period prior to 31.12.2008. In this regard he has also submitted the following case-laws:

a. **Sujana Metal Products Ltd. Vs. CCE, Hyderabad-2011 (273) ELT 112 (Tri.-Bang.) affirmed in Commissioner Vs. Sujana Metal Products Ltd. 2016 (342) ELT A115 (A.P.)**
b. **Ultra Tech Cement Ltd. Vs. CCE, Tirupati – 2014 (310) ELT 170 (Tri.-Bang.)**
c. **Karvir Nivasini Mahalaxmi Ispat Pvt. Ltd. Vs. CCE, Pune – 2016 (334) ELT 104 (Tri.-Mumbai)**

4. The learned Authorised Representative (AR) has reiterated the findings in the impugned order. He has further submitted that Board has clarified vide F.No. 267/52/2008-CX.8 dated 07.01.2009 that Notification No. 50/2008-CE (NT) dated 31.12.2008, which has included SEZ 'developer' is prospective in nature and could apply to supplies cleared from the date of notification and only for authorized operations of the developer. Further he has cited the case of ***Universal Comfort Products Ltd. Vs. Commissioner of Central Excise & ST, Vapi-2023 (9) TMI 59-CESTAT AHMEDABAD*** wherein it is held that:

> *"18. In view of the above Apex Court's decisions, the interpretations have to be restricted only to the words of the statute and notification. Hence, the credit facility extended under the Notification No. 50/2008-CE to clearances to SEZ Developers, which were not specifically mentioned in the said rule prior to 31.12.2008 is applicable only w.e.f. 31.12.2008. Hence the argument of the appellant that the supplies to SEZ developer are export under bond and therefore covered under clause (v) ibid does not have any force and is therefore liable to be rejected.*

Therefore, I find that the denial of cenvat credit availed in respect of supply without payment of duty to the SEZ Developers prior to 31.12.2008 is legally maintainable. I accordingly do not find any infirmity in the impugned order."

5. The learned AR further submitted that the case of **Fosroc Chemicals Ltd.,** was considered by the Hon'ble High Court of Karnataka in ***Commissioner of Central Excise, Customs and Service Tax, Bengaluru Vs. M/s. BASF Construction Chemicals India Pvt. Ltd.-2020 (8) TMI 292-Karnataka High Court,*** wherein it was mentioned that the case is pending before the Hon'ble Apex Court. However, there is no stay.

6. The learned Chartered Accountant in his written submission dated 23.01.2025 *inter alia* has submitted that the decision of the M/s. Universal Comforts Products did not take into consideration the case of **Fosroc Chemicals Ltd.** decided by the Karnataka High Court.

7. Heard the learned Authorised Representative (AR) for the Revenue and appellant's written submissions dated 05.12.2023 and 23.01.2025 and perused the records.

8. I find that the issue in the present appeal is whether the disallowance of credit of duty and the demand of the same under Section 11A of Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004 on the clearances to SEZ developer for the period prior to amendment to Rule 6(6)(i) of the Central Excise Rules made vide Notification No. 50/ 2008-CE(NT) dated 31.12.2008 is tenable.

9. I find that the issue is no more *res integra* and in the judgment of the Hon'ble High Court of Karnataka in the matter of **Commr. of. C. Ex. & S.T., Bangalore Vs. Fosroc Chemicals (India) Pvt. Ltd., - 2015 (318) E.L.T. 240 (Kar.),** it is held that:-

"13. The Parliament has enacted the Special Economic Zones Act, 2005 (The SEZ Act for short) to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto, Section 53 of the Act declares that a special

economic zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. The word "export" has been defined under Act at Section 2(m). According to the definition of the word export, vide Section 2(m)(ii) "export" means supplying goods or providing services, from the Domestic Tariff Area to a Unit or Developer. Such exports were exempted from duty of Central Excise under Section 26 of the SEZ Act, 2005 and consequently application of Cenvat Credit Rules. Section 151 of the Special Economic Zones Act, 2005, overrides the provision of all other laws for the time being in force, notwithstanding anything inconsistent therein with the provision of the Special Economic Zones Act, 2005. This section therefore overreaches and eclipses the provisions of any other law containing provisions contrary to the SEZ Act, 2005. Though the definition of the word "export" in the SEZ Act, in Sec. 2(m) included supply of goods to a "Unit" or "Developer", in clause (i) of sub-rule (6) of Rule 6 of the Cenvat Credit Rules, 2004 the word "Developer" was conspicuously missing and only "unit" was included before the 2008 amendment. It is in that context the aforesaid amendment by Notification No. 50/2008 C.E. (N.T), dated 31-12-2008 was brought in, to clarify the doubt. As the said amendment is clarificatory in nature, that is the reason why it was brought by way of "substitution". The effect of the said "substitution" is that the Cenvat Rules 2004 are to be read and construed as if the altered words had been written into the Rules of 2004 with pen and ink and the words "to a developer of the SEZ for their authorized operation" was there from the inception. This is the understanding of the Government as is also clear from the circular issued by the C.B.E.&C. bearing No. 29/2006-Cus., dated 27-12-2006 wherein clause 4 reads as under :-

> *"4. In the light of the aforesaid provisions, with effect from 14-3-2006, Chapter XA of the Customs Act, 1962, the SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003, and the exemption Notification No. 58/2003-C.E.,*

> *dated 22-7-2003 regarding the supply of goods to SEZ units & SEZ developers have become redundant. Consequently, the supplies from DTA to a SEZ unit, or to SEZ developers for their authorized operations inside a SEZ notified under sub-section (1) of Section 4 of the Act, may be treated as in the nature of exports".*

10. Further, this Tribunal's order in the matter of **M/s. Sujana Metal Products Ltd., Vs. CCE, reported in 2011 (273) ELT 112** was not accepted by the Department and same was challenged before the Hon'ble Andhra Pradesh High Court and Hon'ble High Court of Andhra Pradesh, as per the judgment dated 02.07.2013 reported in **2016 (342) ELT A115 (A.P)** dismissed the Departmental appeal, and no appeal against the order was filed by the Department. Further, pursuant to the revision of monetary limits under the Litigation Policy, the matter of M/s. **Fosroc Chemicals (India) Pvt. Ltd**., was listed for hearing before the Hon'ble Supreme Court on 28.10.2020. As per the website of Hon'ble Supreme Court the status of the appeal is shown as disposed (dismissed as withdrawn).

11. In view of the above discussion and considering the facts of the case, the issue has attained finality, therefore I find that the Respondent is eligible for claiming the benefit of Notification No.50/2008-CE(NT) dated 31.12.2008 for the period prior to 31.12.2008 for the clearances to SEZ developers, therefore the confirmation of demand along with interest and imposition of penalty in the impugned order is unsustainable.

12. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 18.07.2025)

(Pullela Nageswara Rao)
Member (Technical)

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