CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20063 of 2017

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-COM-GVK-03-16-17 dated 30.09.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore Commissionerate, Mysore.)

M/s. Kaynes Technology India Private Limited,
No. 23-25, Belagola Food Industrial Area,
Metagalli P.O.,
Mysore – 570 016.

Appellant(s)

VERSUS

Commissioner of Central Excise, Mysore Commissionerate
S1/S2, Vinaya Marga,
Siddhartha Nagar, Mysore – 570 011.

Respondent(s)

APPEARANCE:

Mr. B. Venugopal, Advocate for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20481 /2026

DATE OF HEARING: 12.12.2025
DATE OF DECISION: 06.04.2026

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.MYS-EXCUS-000-COM-GVK-03-16-17 dated 30.09.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of electronic assemblies like Populated Printed Circuit Boards (PCB) Assemblies, sub-assemblies and solar products falling under Chapter heading 8502 and 8534 of Central Excise Tariff Act, 1985. They availed cenvat credit on inputs and input services. Also, they are engaged in the manufacture of solar energy equipments and parts of windmill which they had cleared to M/s. Duron Energy Ltd., Bangalore and to M/s. Wind World Pvt. Ltd., Bangalore claiming exemption under Notification No.6/2006 dated 01.03.2006 and No.12/2012 dated 17.03.2012 respectively and also parts of defence equipments to M/s. BEL, Chennai and M/s. Navl Physical and Oceanographic Laboratory, Kochi by claiming exemption under Notification No.4/2006-C.Ex. dated 01.03.2006 and No.10/1997-C.Ex. dated 01.03.1997 respectively. Alleging that the appellant had wrongly availed cenvat credit on inputs exclusively used in the manufacture of exempted products by paying an amount equal to 5% / 6% as per Rule 6(3) of Cenvat Credit Rules, 2004 (CCR, 2004), show-cause notice was issued to them on 20.04.2016 for recovery of the cenvat credit of Rs.51,25,611/- availed on inputs exclusively used in the manufacture of exempted products during the period 01.04.2011 to 31.03.2014. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the allegation of the Department is that the inputs have been exclusively used in the manufacture of exempted products; hence, they are barred from availing cenvat credit on the inputs in terms of Explanation II to Rule 6(3) of the CCR, 2004 even though they have paid an amount equal to 5% / 6% under Rule 6(3)(i) of CCR, 2004 of the value of the exempted goods. He has submitted that the appellants procure components and parts required for a specific project ; most of the parts / components are standard electronic components and are freely available in the market. Thus, most of these parts / components are common inputs used in the manufacture of both dutiable and exempted goods though some of the items cannot be used for manufacture of any other final products. For the purpose of identification of the manufacturer of components during the storage, these parts / components are marked with part numbers with stickers affixed and separate inventory is maintained. However, once these parts or components issued for production, consumption of such parts or components cannot be monitored as the stickers marked with part numbers are removed in the production area and there is a high possibility that parts / components meant for one specific project of exempted goods are used in another ongoing project of dutiable goods. It is his contention that the said position has been stated by Shri Sajan Anandaraman, Assistant Manager during his statement dated 01.10.2015. Since the appellant could not able to maintain separate accounts for receipts, consumption and inventory of the inputs used in exempted final products as contemplated under sub-rule (2) of Rule 6; hence opted to pay an amount of 5% / 6% of the value of the exempted products in terms of Rule 6(3)(i) of CCR, 2004. Therefore, recovery of cenvat credit alleging that it has been exclusively used in the manufacture of exempted goods is bad in law. The Tribunal in their own case vide Final Order No.21947/2018 dated 28.12.2018 observed that once an amount is paid under Rule 6(3) of CCR, 2004, further demanding cenvat credit on the inputs used in the manufacture of exempted products is unsustainable in law.

3.2. Further, they have submitted that the parts / components which are alleged to be exclusively used for exempted products is not correct as certain inputs are common and could be used in the manufacture of dutiable as well as exempted products.

Further, he has submitted that the present demand has been confirmed without taking note of the fact that the appellant had already paid certain amounts which is equal to 5% / 6% of the value of exempted goods during the period. The impugned order is silent about the amount paid by the appellant.

3.3. Further, the learned advocate has submitted that the demand is confirmed invoking extended period of limitation alleging suppression of facts. He has submitted that the appellant has been paying an amount @ 5% / 6% as applicable during the period on the value of the exempted goods in terms of Rule 6(3)(i) of CCR 2004 and the same has been duly declared in their ER1 returns throughout the period of dispute. They were under a *bona fide* belief that once they could not able to maintain separate records for receipt and consumption of the inputs, an amount of 5% / 6% is payable under Rule 6(3)(i) of CCR, 2004. He has submitted that the unit has been periodically audited by the Department and at no point of time, it has been pointed out by the audit team that the procedure followed by the appellant in discharging 5% / 6% of the value of the exempted goods in terms of Rule 6(3)(i) is incorrect; therefore, the demand confirmed invoking extended period of limitation is bad in law. In support, they have referred to the judgment of the Hon'ble Karnataka High Court in the case of CCE, Bangalore-I Vs. MTR Foods Limited [2012(282) ELT 196 (Kar.)] and also the following judgments:

i. Pragathi Concrete Products Pvt. Ltd. Vs. CCE, Bangalore [2005() ELT 487 (Tri. Bang.) – Affirmed by the Hon'ble Supreme Court.
ii. CCE, Bangalore Vs. Pragathi Concrete Products Pvt. Ltd. [2017(50) STR 25 (SC)]
iii. KN International Ltd. Vs. CCE,C&E [2024(17) Centax 115 (Tri. Al..)]
iv. CCE, Aurangabad Vs. Yeshwant Industries [2014(313) ELT 667 (Tri. Mumbai)]
v. Khaira and Associates Vs. CC,CE&ST, Bhopal [2020(34) GSTL 224 (Tri. Del.)]

vi. Vandana Global Ltd. Vs. CCGST,CE&C, Raipur [2022(56) GSTL 310 (Tri. Del.)]

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is : (i) whether the appellant is required to reverse the cenvat credit availed on alleged exclusive use of the inputs in the manufacture of exempted products even though they have already reversed an amount of 5% / 6% as applicable during the relevant period on the exempted finished products and (ii) whether the demand is barred by limitation.

7. The relevant provision of Rule 6 of Cenvat Credit Rules, 2004 as was in during the relevant period reads as follows:-

> RULE 6. Obligation of a manufacturer or producer of final products and a provider of output service. —
> (1) The CENVAT credit shall not be allowed on such quantity of (input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services), except in the circumstances mentioned in sub-rule (2)
>
> Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.
>
> (2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for

(a) the receipt, consumption and inventory of inputs used-

(i) in or in relation to the manufacture of exempted goods:
(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods.
(ii) for the provision of exempted services:
(iv) for the provision of output services excluding exempted services, and

(b) the receipt and use of input services-

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal,

(iii) for the provision of exempted services, and

(iv) for the provision of output services excluding exempted services.

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely

(i) pay an amount equal to six per cent of value of the exempted goods and exempted services, or

(ii) pay an amount as determined under sub-rule (3A), or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

> Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i)
>
> Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (1) shall be six per cent of the value so exempted.
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> Provided also that in case of transportation of goods of passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent of value of the exempted services.
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> Explanation I. If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
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> Explanation II. For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.
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> Explanation III. No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

8. In the present case, undisputedly the appellant since could not able to maintain separate records of the receipts, consumption and inventory of the inputs used in the manufacture of both dutiable and exempted goods proportionately, resorted to discharge 5% / 6% of the value of the exempted products. Once they had paid 5% / 6% of the value of the exempted goods, direction to reverse the credit on the inputs allegedly used in the exempted final products is untenable in law as held in their own case by this Tribunal vide Final Order No.21947/2018 dated 28.12.2018. On the issue of

limitation, we find that the appellant has been paying an amount @ 5% / 6% of the value of the exempted products and reflected the same in their ER1 returns periodically filed with the Department; also, their unit has been audited by the Department from time to time and no objection has been raised. In these circumstances, allegation of suppression of fact with intent to evade payment of duty cannot be sustained. Thus, the demand is also barred by limitation. In the result, the appellant succeeds both on merit and limitation. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 06.04.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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