CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20142/2016-SM

[Arising out of Order-in-Appeal No. 369-15-16 dated 07/12/2015 passed by Commissioner of Central Excise, COCHIN (Appeal)]

M/s. Vaidyaratnam Oushadhala
Olur,thrissur
THRISSUR – 680 322
KERALA

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax Calicut
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
S.RAGHU ADV
543, 12th Cross, 8th main,
J. P. Nagar, 2nd Phase,
Bangalore-560078.

For the Appellant

Mrs. Kavitha Podwal, AR — For the Respondent

Date of Hearing: 04/05/2018
Date of Decision: 04/05/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20719 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 7.12.2015 passed by the Commissioner (A) whereby the Commissioner (A) has confirmed the demand and set aside the penalty.

2. Briefly the facts of the present case are that the appellants are manufacturers of ayurvedic medicines. They manufacture both dutiable and exempted ayurvedic medicines and availed CENVAT credit of excise duty paid on inputs under Rule 6(1) of the CENVAT Credit Rules, 2001/2002 and 2004. In the case of fuel used in generation of steam, they were taking credit for the entire quantity received, which were used for manufacture of dutiable and exempted goods. It was alleged that as per Rule 6(1) of CENVAT Credit Rules, 2002/2002 and 2004 the appellant was not eligible to avail CENVAT credit on such quantity of inputs (furnace oil), issued as fuel for generation of steam used in the manufacture of non-dutiable products. They did not reverse the credit of duty availed on fuel used in the manufacture of exempted goods for the period 01.04.2003 to 15.5.2005. Therefore, three show-cause notices were issued to the appellant proposing to disallow the wrong credit so availed and recovered from them along with interest under Rule 12 of the CENVAT Credit Rules, 1944. The demand issued was confirmed along with interest and penalty. Aggrieved from the said Order-

in-Original, appellant preferred an appeal before the Commissioner (A), who upheld the Order-in-Original, hence the present appeal.

3. Heard both the parties and perused the records.

4. The dispute in the present case is whether the appellants are liable to reverse the proportionate CENVAT credit attributable to exempted goods manufactured in their factory as required under Rule 6(1) of CENVAT Credit Rules, 2002 which existed during the material period, in cases, wherein the fuel input was used commonly for production of exempted goods and dutiable goods.

5. The learned AR for the Revenue submitted that this issue is no more *res integra* and has been settled by the apex court by the decision in the case of *Commissioner vs. Gujarat Narmada Fertilizer Company Ltd.* reported in *2009 (240) ELT 661* and subsequently, followed by the Hon'ble Supreme Court in the case of *CCE, Vodadara vs. Gujarat Narmada Fertilizer Company Ltd.* reported in *2012 (286) ELT 481* and also in the case of *CCE vs. Dalmia Magnesite Corporation* reported in *2016 (344) ELT 100*

(Del.) and subsequently, it was followed by High Court of Gujarat in the case of *CCE vs. Deeyakar Aluminium Pvt. Ltd.* as reported in *2016 (344) ELT 76 (Guj.)*.

6. On the other hand, the learned counsel for the appellant also admitted that the Hon'ble Supreme Court has settled this issue in favour of the Revenue.

7. After considering the submissions of both sides, I find that the issue is settled in favour of the Revenue. In this regard, it is pertinent to reproduce para 3 & 4 of the Hon'ble Supreme Court's judgment in the case of *Dalmia Magnesite Corporation* cited supra, which is reproduced herein below:

> "3. The aforesaid issue has now been finally adjudicated and determined by the Supreme Court in the case of *Commissioner of Central Excise* v. *Gujarat Narmada Fertilizers Co. Ltd.* [2009 (240) E.L.T. 661 (S.C.)]. After taking into consideration the relevant Rules including Rule 57AD of the Central Excise Rules, 1944 on the basis of which the Tribunal has also passed the order, the Supreme Court has held that the assessee would not be entitled to any benefit under the aforesaid provision. Relevant discussion in this behalf contained in the Para 10 of the judgment reads as under :
>
> > *"10. In our view, sub-rule (1) is plenary. It restates a principle, namely, that CENVAT credit for duty paid on inputs used in the manufacture of exempted final products is not allowable. This principle is in-built in the very structure of the CENVAT scheme. Sub-rule (1), therefore, merely highlights that principle. Sub-rule (1) covers all inputs, including fuel, whereas sub-rule (2) refers to non-fuel-inputs. Sub-rule (2) covers a situation where common cenvatted inputs are used in or in relation to manufacture of dutiable final product and exempted final product but the fuel-input is excluded*

from that sub-rule. However, exclusion of fuel-input vis-à-vis non-fuel-input would still fall in sub-rule (1). As stated above, Sub-rule (1) is plenary, hence, it cannot be said that because sub-rule (2) is inapplicable to fuel-input(s), CENVAT credit is automatically available to such inputs even if they are used in the manufacture of exempted goods. The cumulative reading of sub-rules (1) and (2) makes it abundantly clear that the circumstances specified in sub-rule (2), which inter alia requires separate accounting of inputs, are not applicable to the fuel-input(s). However, the said sub-rule (2) nowhere says that the legal effect of sub-rule (1) will stand terminated in respect of fuel-inputs which do not fall in sub-rule (2). In other words, the legal effect of Sub-rule (1) has to be applied to all inputs including fuel-inputs, only exception being non-fuel-inputs, for which one has to maintain separate accounts or in its absence pay 8%/ 10% of the total price of the exempted final products. Therefore, sub-rule (1) shall apply in respect of goods used as "fuel" and on such application, the credit will not be permissible on such quantity of fuel which is used in the manufacture of exempted goods. In our view, the above aspect has not been properly appreciated by the Gujarat High Court in the above case of Gujarat Narmada Valley reported in (2006) 193 E.L.T. 136 (supra)."

4. Learned counsel for the respondent could not dispute the aforesaid position in law. Accordingly, this appeal succeeds and orders of the Tribunal as well as Commissioner (Appeals) are hereby set aside and the orders of the Assistant Commissioner, Salem Division is restored."

8. In view of the decision of the apex court, I do not find any merit in the appellant's case and therefore, the appeal of the appellant is dismissed.

(Operative portion of the Order was pronounced
in Open Court on **04/05/2018**)

S.S GARG
JUDICIAL MEMBER

rv...