

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

REGIONAL BENCH – COURT NO. 1

Central Excise Appeal No. 20044 of 2017

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/BKK/033/16-17 (CX) dated 16/11/2016 passed by the Commissioner of Customs & Central Excise, Belgaum)

Roquette Riddhi Siddhi Pvt. Ltd.

....Appellant

P.B No. 9, Gokak Falls Road, Gokak
Belgaum – 591 307
Karnataka

VERSUS

**Commissioner of Central Excise,
Customs and Service Tax,
Belgaum**

....Respondent

No. 71, Club Road,
Central Excise Building,
Belgaum - 590 001
Karnataka

WITH

Central Excise Appeal No. 20872 of 2017

(Arising out of Order-in-Original No.
BEL/EXCUS/000/COM/BKK/056/16-17 (CX) dated 06/03/2017
passed by the Commissioner of Central Excise and Customs,
Belgaum)

**Roquette Riddhi Siddhi Pvt.
Ltd.**

....Appellant

P.B No. 9, Gokak Falls Road, Gokak
Belgaum – 591 307
Karnataka

....Respondent

**Commissioner of Central Excise,
Customs and Service Tax,
Belgaum**

No. 71, Club Road,
Central Excise Building,
Belgaum – 590 001
Karnataka

APPEARANCE:

Mr. Paresh M Dave, Advocate

For the Appellants

Mr. P. Rama Holla, Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER

HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order Nos. 20088-20089 / 2022

Date of Hearing: 04/03/2022

Date of Decision: 04/03/2022

Per : ASHOK JINDAL

The appellant is in appeal against the impugned orders.

2. The Appeal No. E/20044/2017 is filed for the period October 2011 to August 2014 and Appeal No. E/20872/2017 is for the subsequent period i.e September 2014 to February 2015. The appellant is a manufacturer of Maize Starch Powder, Destrose Monohydrate, Malto Dextrin Powder, High Malto Syryp, Corn Syrup Solid, Destrose Syrup, Liquid Glucose, Modified Starch etc. They are availing cenvt credit on the inputs and input services used in their final product. During the course of manufacture, some by-product emerges on the clearance of which appellant has not paid any duty. Further, the Revenue is of the view that the appellant has taken cenvat credit for the invoices issued prior to 01/09/2014 on 18/09/2014 and in terms of Notification No. 21/2014-CE (NT) dated 11/07/2014, the appellants are required to take cenvat credit within 6 months from the issuance of the invoice. Thereafter, they are not entitled to take the cenvat credit. Further, it was also felt by the authorities below that the appellant is required to reverse cenvat credit on inputs and input services in proportionate to the quantum of value of by-product residue or

waste arising during the course of manufacture of their final product. On these two issues, a show-cause notice was issued to the appellant but denied the cenvat credit and to reverse proportionate cenvat credit attributable to the clearance of by-product.

2.1. The Second show-cause notice in Appeal No. E/20872/2017 was issued for proportionate reversal of cenvat credit attributable to the inputs/input services consumed in emerging by-products which have been cleared without payment of duty.

2.3. The Adjudicating authority confirmed the demand against the appellant on both the issues. Against the said orders, the appellant is before us.

3. The learned counsel for the appellant appeared and submits that the issue for the invoices issued prior to 01/09/2014 and cenvat credit taken on 18/09/2014 whether they are entitled to cenvat credit or not has been settled by this Tribunal in the case of ***Bharat Aluminium Company Limited in Excise Appeal No. 53851/2018 vide Final Order Nos. 50913-50914/2019 dated 18/07/2019*** wherein it has been held that the invoices issued prior to 01/09/2014 and cenvat credit was taken within six months from 01/09/2014 are entitled for cenvat credit. Therefore, he submits that cenvat credit cannot be denied.

3.1. With regard to proportionate reversal of cenvat credit on inputs and input services used for by-products which has been cleared without payment of duty, he submits that the said issue has been dealt in the case of ***C.C.E & S.T, Raipur Vs. Rajaram Maize Products vide Final Order No. 53193/2018 dated 20/09/2018*** wherein it has been held that prior to 01/03/2015, the provisions of Rule 6 of Cenvat Credit Rules, 2004 are not

applicable to the facts of the case. He also relied on the decision of **Anil Products Ltd. Vs. C.C.E, Ahmedabad – 2013 (296) E.L.T. 378 (Tri.-Ahmd.)** which has been affirmed by the **Hon'ble Gujarat High Court reported in 2017 (346) E.L.T. 573 (Guj.)**.

4. On the other hand the learned AR supported the impugned order and reiterated the findings of the same.

5. Heard the parties. Considered the submissions.

6. On a careful consideration of the submissions made by both sides, a common issue in both the appeals is that whether the appellant is required to reverse the proportionate cenvat credit on inputs and input services consumed in by-product while manufacturing the final goods or not? The said issue has been settled by the Tribunal in the case of **Anil Products Ltd.** (supra) and the said order has been affirmed by the Hon'ble Gujarat High Court cited (supra).

6.1. Further in the case of Rajaram Maize Products vide Final Order dated 20/09/2018, this Tribunal further observed as under:

“After careful consideration of the submissions made from both the sides we know that admittedly, the Adjudicating Authority has dropped the demand by treating the entire period being prior to 01/03/2015. As such his findings on the Explanation 1 introduced with effect from 01/03/2015 are not available. As such we set aside a part of the impugned order, for the period post 01/03/2015 and remand the matter back to Commissioner to consider the Explanation 1 to sub Rule 1 of Rule 6 and give his findings on the same. We make it clear that we have not expressed

our views on merits of the case and the assessee at liberty to contest the same before the Adjudicating Authority.”

6.2 In view of this, we hold that the provisions of Rule 6 are not applicable to the appellants in these cases. Therefore, the appellants are not required to reverse the proportionate cenvat credit used in by-product while manufacturing their final product. Accordingly, the demand on the said count is set aside.

6.3. The second issue arises in Appeal No. E/20044/2017 is that whether the appellant can avail cenvat credit on the invoices issued prior to 01/09/2014 within six months after the issuance of the Notification No. 21/2014 CE (NT) dated 11/07/2014 or not? The said issue has been settled by this Tribunal in the case of ***Bharat Aluminium Company Limited*** wherein this Tribunal has observed as under:

“5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions;

(i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad]

(ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore]

(iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore [2019 (1) TMI 1426-CESTAT New Delhi]

(iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai]

(v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore]

(vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi]

Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon

by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.

6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.”

As the issue has already been settled and no more *res integra*, therefore, we hold that appellants have correctly taken the cenvat credit on 18/09/2014 for the invoices issued prior to 01/09/2014.

7. In view of the above, we do not find any merit in the impugned orders and the same are set aside. In the result, appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced
in the open court on **03/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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