CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 57636 Of 2013

[Arising out of OIA No. 28/CE/Appl/CHD-II/2013 dated 12.02.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Indian Acrylics Ltd. : **Appellant (s)**
Vill.-Harikrishanpura, Sangrur

Vs

CCE & ST- Chandigarh-II : **Respondent (s)**
Plot No. 19, C.R. Building, Sector 17-C,
Chandigarh 160017

APPEARANCE:
Shri Sudeep Singh Bhangoo, Advocate for the Appellant
Shri Shivam Syal, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 60691/2023

Date of Hearing:06.12.2023

Date of Decision:06.12.2023

Per : S. S. GARG

The present appeal is directed against the impugned order 12.02.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the order-in-original.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of Acrylic Fibre, Tow & Tops falling under Chapter 55 of the First Schedule to this Central Excise Tariff Act, 1985.
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2.1 The appellant also have a captive power plant for the generation of electricity within their factory which runs on Biomass/Agricultural waste. The electricity generated by the appellant is mainly consumed by them captively for the manufacture of their final products. The surplus electricity is sold to Punjab State Electricity Board (PSEB in short) and is supplied to residential colony for the workers within the factory.

2.2 A show cause notice was issued to the appellant for the period from April, 2006 to February, 2009 which sought to recover an amount equal to 10% of the electricity sold to PSEB and consumed by the appellant in their residential colony as per Rule 6 of the Cenvat Credit Rules, on the ground that electricity is an excisable goods and is chargeable to nil rate of duty and that the appellant has availed credit on the input services such as supply of Man Power Service and Insurance Service which have been commonly used for the generation of electricity which has been captively used for the manufacture of dutiable goods and part of the electricity which has been sold to the PSEB and has been used in the residential colony.

2.3. The appellant initially reversed credit amounting to Rs.92,357/- on proportional basis for the period from April, 2007 to February, 2009 but the show cause notice sought to recover an amount of Rs.36,09,315/- which was an amount equal to 10% of the value of electricity sold to PSEB and used in the residential colony for the violation of Rule 6 and Rule 14 of the Cenvat Credit Rules. Show cause notice also demanded interest and proposed the penalty.

2.4 Thereafter, the appellant had reversed the entire amount of Cenvat credit availed on all the Input Services (Manpower supply and

Insurance Service) which has been used for the generation of electricity amounting to Rs. 14,20,586/- and thereafter, the appellant took a plea before the Adjudicating Authority that as the entire amount of Cenvat credit availed in relation to the generation of electricity has been reversed, no amount over and above this amount merits to be recovered. The appellant also took a plea that the electricity is not an excisable item therefore, Rule 6 is not applicable as this Rule is applicable only in a case where common Inputs/Input Services have been used for the manufacturing of exempted as well as dutiable products. Since electricity is not excisable item, the question of it being exempt or chargeable to nil rate of duty does not arise. The appellant also pleaded that only proportionate credit was required to be reversed as shown in the calculation chart filed along with the reply to Show Cause Notice and also raised the issue of time bar.

2.5 After following due process, the original authority dropped the demand of Rs. 36,09,315/- on the ground that the total cenvat credit availed amounting to Rs. 14,20,586/- has been reversed but demanded interest on the said amount.

2.6 Aggrieved by the said order, the appellant filed appeal before the Ld. Commissioner (Appeals) who rejected their appeal.

2.7 Hence, the present appeal.

3. Heard the parties and perused the case records.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submits that in the case of electricity although it has been mentioned against Tariff Entry No.27160000 in the First Schedule of the CETA, 1985 but no rate of

duty has been specified against the entry. Hence, the electricity is not an excisable good and as it is not excisable, it cannot be considered as exempted goods.

4.1 He further submits that at the relevant point of time, Rule 6 was applicable only where common inputs/input services were used for the manufacture of dutiable as well as exempted final products. As the electricity was not excisable, Rule 6 was not applicable to electricity and therefore the appellant was not required to reverse/deposit an amount equal to 10% of the value of electricity sold outside or supplied to the residential colony.

4.2 He further submits that at best the appellant was only required to reverse an amount proportionate to the electricity sold to PSEB and used in the residential colony as an input services used for generation of electricity which has been captively consumed. He prayed that the excess amount reversed by them be refunded to them.

4.3 He also raised the issue that the entire demand is hit by bar of limitation as the appellant was under a bonafide belief that since electricity is not an excisable item and the provisions of Rule 6 of Cenvat Credit Rules are not applicable.

5. On the other hand, the Ld. DR reiterated the findings in the impugned order.

6. After considering the submissions of both the parties and perusal of material on record, we find that for the relevant period from April 2006 to February 2009, the department demanded an amount equal to 10% of the electricity sold to PSEB and consumed by the appellant in their residential colony meant for their workers whereas the stand of the appellant before both the authorities was that the

electricity is not an excisable goods and consequently Rule 6 is not applicable.

6.1 We also find that the appellant though had reversed the entire amount of Rs. 14,20,586/- availed on all input services (Manpower supply and Insurance Service) which has been used for generation of electricity but his defence is that in fact he was required to reverse only proportionate credit. The appellant has also furnished calculation chart of proportionate credit required to be reversed alongwith his reply to the show cause notice but the same was not considered by both the authorities.

6.2 The only relief appellant is seeking in this case is that the excess amount reversed by them needs to be refunded back to them and they are also not liable to pay interest on the cenvat credit availed by them as the appellant had always more balance in their cenvat account then the amount involved in their present case.

6.3 Further, we find that the main ground raised by the appellant before both the authorities regarding the non applicability of Rule 6 of CCR, 2004 has not been considered and not given any findings in the impugned order. There is no finding in the impugned order regarding the stand of the appellant to reverse only proportionate cenvat credit and not the whole cenvat credit on input services.

7. In view of these facts emanating from the record, we are of the considered opinion that this case needs to be remanded back to the Ld. Commissioner (Appeals) to decide afresh after considering all the pleas/grounds raised by the appellant. Consequently, we set-aside the impugned order and allow the appeal of the appellant by way of remand.

8. Ld. Commissioner (Appeals) is further directed to pass a fresh order within a period of three months from the date of receipt of certified copy of this order.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.