CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 55498 of 2014

[Arising out of Order-in-Original No. CHD-CEX-001-COM-41-2014 dated 29.05.2014 passed by the Commissioner of Central Excise, Chandigarh]

Commissioner of Central Excise, Chandigarh-I ......**Appellant**
Central Revenue Building, Plot No.19, Sector-17C,
Chandigarh-160017

VERSUS

M/s Surya Pharmaceuticals Ltd. ......**Respondent**
50-51, EPIP, Phase-I, Jharmajri,
Solan, Himachal Pradesh-173205

APPEARANCE:

Shri Siddharth Jaiswal and Shri Shivam Syal, Authorized Representatives for the Appellant
None for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60135/2025

DATE OF HEARING: 16.01.2025
DATE OF DECISION: 12.02.2025

P. ANJANI KUMAR:

The respondents, M/ Surya Pharmaceuticals Ltd. are engaged in the manufacture and export of menthol, menthone, terpene, peppermint oil, de-mentholized peppermint oil etc. By virtue of Exemption Notification No.10/2010 dated 27.02.2010, the final product and by-products manufactured by the respondents got exempted; Revenue was of the opinion that the respondent was required to reverse the CENVAT credit of Rs.29,74,339/- contained in the stock of inputs/ raw materials as on 27.02.2010 and that available credit of Rs.1,25,10,155/- should lapse in terms of Rule 11(3) of CENVAT Credit Rules, 2004; the respondent failed to reverse the credit of Rs.1,54,84,494/- as on 01.03.2010; the appellant continue to avail CENVAT credit, of Rs.41,71,782/-, contained in capital goods, inputs and input services, used in the manufacture of exempted goods during the period March 2010 to January 2012; further, it appeared that out of the credit of Rs.41,71,782/-, the appellants have reversed Rs.40,10,329/-, on account of clearance of aluminum scrap, capital goods and other debits; thus, the amount of duty paid of Rs.2,79,399/- for such clearances from the CENVAT credit available and the same is recoverable from the respondents; it also appeared that the appellants are required to reverse the wrongly availed credit of Rs.1,61,453/-. Accordingly, a Show Cause Notice dated 27.08.2012 was issued to the respondents to recover Central Excise Duty of Rs.2,97,399/-; to recover inadmissible credit of Rs.1,61,653/- and Rs.29,74,339/- involved on the raw materials in stock; to treat the balance credit of Rs.1,25,10,155/- has lapsed. Adjudicating Authority vide the impugned order confirmed the demand of Central Excise Duty of Rs.2,97,399/- under Section 11A; confirmed recovery of CENVAT credit of Rs.1,61,453/- and Rs.45,08,386/- under Rule 14 of the Central Excise Act along with interest and imposed equal penalties; however, the appellants are not required to reverse the credit of Rs.1,09,76,108/- as the same stood already recovered under a different Show Cause Notice adjudicated on 22.04.2013. Hence, this appeal by Revenue on the dropping of demand of Rs. 1,09,76,108/-.

2. Learned Authorized Representative for Revenue reiterates the grounds of appeal and submits that the impugned order incorrectly allows adjustment/ reversal of Rs. 1,09,76,108/- total amount of credit of Rs. 1,54,84,494/on the ground that 1,09,76,108/- already stands covered under a different Show Cause Notice dated 06.04.2011and the said demand was confirmed vide OIO No. 30/CE/CHD-II dated 22.04.2013, it would not be appropriate to again confirm that part of demand on some other ground; the issue in the SCN dated 06.04.2011 was fraudulent availment of inadmissible CENVAT credit of Rs. 1,09,76, 108/- during the period from 2006-07 to 2009-10 whereas the issue in the instant SCN dated 24.08.2012 was about the fact that w.e.f. 01.03.2010 remaining CENVAT credit of Rs. 1,25,10,155/-would have lapsed, in terms of provisions of Rule11(3) of the CC Rules. he submits that the Respondent had reversed the amount of CENVAT credit of Rs. 1,09,76,108/, on 03.08.2012, under protest. However, as stipulated in Rule 11(3) of the CENVAT Credit Rules, it was obligatory on the part of respondent to first reverse the amount of Rs.29,74,339/- on 01.03.2010 attributable to inputs lying in stock as on 27.2.2010 and the remaining CENVAT credit of Rs. 1,25,10,155/- would have

lapsed. Any alternative use of such CENVAT credit, was not legally permissible/available to the respondent. He relies on Choksi Enterprises – 2011 (274) ELT 401 (Tri. Mumbai) and Agarwal & Company – 2005 (182) ELT 267 (Tri. Mumbai).

3. Despite repeated hearings fixed, none appeared for the respondents and no request for any adjournment was sent by the respondents or their counsel; therefore, we are of the considered opinion that the case cannot be kept pending indefinitely. Therefore, we proceed to decide the case on the basis of available records and the submissions of the learned Authorized Representative.

4. Heard both sides and perused the records of the case. We find that Learned Commissioner records his observation as far as lapsed credit as follows.

> The Noticee have taken another plea that Cenvat credit amounting to Rs.1,09,76,108/- was already covered under a different Show Cause Notice C.No. IV(HQ)P/05/33/2010/35dated 06.04.2011(adjudicated vide OIO No. 30/CE/CHD-II dated 22.04.2013) and they have already reversed the disputed amount of Cenvat credit of 1,09,76,108/-, the department cannot initiate proceedings for the reversal of the same again. A perusal of the said OIO dated 22.4.2013 indicates that issue dealt therein was regarding fraudulent availment of inadmissible Cenvat credit of Rs: 1,09,76,108/- during the period from 2007-08 to 2009-10. Vide said 0I0 dated 22.4.2013, the demand of Cenvat credit of Rs. 1,09,76,108/- has been confirmed and the amount already debited and has been appropriated; demand of interest on the confirmed demand had been confirmed and penalty of Rs. 94,66,998/- under Section 11AC of the Act read with Rule 15(2) of the Credit Rules had been imposed. As the demand of Cenvat credit of Rs.1,09,76,108/- has already been confirmed vide said OI0 dated 22.4.2013,

> I do not find it appropriate to again confirm that part of demand on some other ground.

5. We find that in terms of Rule 11(3) of CENVAT Credit Rules, 2004, the credit lying with the assessee as on the date on which the final products have been declared exempt shall lapse. We find that Tribunal in the case of Choksi Enterprises (supra) held that:

> I have carefully considered the rival submissions. In the Dai Ichi Karkaria Ltd. case (supra), the Hon'ble Apex Court had clearly held that once the credit of duty has been taken rightly and has been utilized also rightly, in terms of the provisions of law, then such credit becomes indefeasible and such credit cannot be recovered at a subsequent point of time on the ground that the product has become exempted at a later point of time. The same principle has been followed by the Hon'ble High Courts of Himachal Pradesh, Panjab & Haryana and also the Hon'ble High Court of Karnataka in the cases cited (supra). Therefore, what is relevant is at the time of taking credit and utilization of the credit, whether the assessee was entitled for the same. Once the assessee is entitled, then the question of reversal of the same at a subsequent point of time does not arise at all. In the case of Amrit Paper (supra) relied upon by the department, the facts of the case were different. In that case the Hon'ble Apex Court held that the Rule 57C provides in mandatory and categorical terms that no credit of the specified duty paid on the inputs used in the manufacture of a final product shall be allowed if the final product is exempt from the whole of the duty of excise thereon or is chargeable to nil rate of duty. Moreover on the facts of that case, it was found that the manufacturer had availed of the credit at the time of the clearance of the goods and had suo motu reversed it to avail the exemption later on almost after 11 months when he claimed refund of Modvat credit and, therefore, it was held that he was not entitled to exemption. Thus in the case of Amrit Paper (supra), it was the case of availing exemption and the exemption was based on the condition that the credit should not be availed on the inputs utilized in the manufacture of the product. In the instant case that is not the position and, therefore, the ratio of the Hon'ble Apex Court's judgment in the aforesaid case will not apply. The facts of the present case are very similar to the facts pertaining in Dai Ichi Karkaria Ltd. case (supra) decided by the Hon'ble Supreme Court and TAFE Ltd. case (supra)

> decided by the Hon'ble High Court of Karnataka. When the credit was taken and utilized the goods were chargeable to excise duty and, therefore, the credit was rightly taken and rightly utilized, only at a later point of time the goods became exempted. Therefore, seeking reversal credit, when subsequently the final product becomes exempt from duty is not sustainable in law. What, at best, can be recovered is the credit which is still lying in the account which has not been utilized and such credit can be lapsed when the product becomes fully exempt from duty.

6. We find that the records of the case do not reveal whether the balance that is sought to be held to have lapsed as on 01.03.2010 was after the reversal made in terms of the OIO dated 22.04.2013 or otherwise. It is also not clear as to how the impugned order holds that the amount of Rs.1,09,76,108/- was reversed. The Show Cause Notice dated 06.04.2011 was about fraudulent availment of CENVAT credit and in case the appellant has reversed the demand confirmed vide Order dated 22.04.2013, it is not understood as to how the credit of Rs.1,54,84,494/- is available as on 27.10.2010 i.e. as on the date of issue of Notification No. 10/2010 dated 27.02.2010. We find that both the impugned Show Cause Notice dated 27.08.2012 and the other Show Cause Notice dated 06.04.2011 have been issued well beyond 01.03.2010. Revenue, in fact, had an opportunity to take up both issues in a single Show Cause Notice. Revenue instead of taking a holistic view has confounded the issue further by issuing multiple Show Cause Notices giving rise to the confusion. As the impugned Show Cause Notice considers the balance of credit lying as on 27.02.2010 to be Rs.1,54,84,494/- and the impugned order finds Rs.Rs.1,09,76,108/- to have been already

reversed, we find that the issue requires further physical verification.

7. In view of the above, we find it necessary in the interest of justice that the issue, as far as the allowing of adjustment/ reversal of CENVAT credit of Rs.1,09,76,108/- is concerned, should travel back to the Original Authority to verify as to whether the respondents have reversed the above credit in terms of the Order-in-Original dated 22.04.2013 and if so, what was the actual balance lying in credit as on the date of Notification i.e 27.02.2010. We hold that such credit actually lying in balance as on 01.03.2010 shall lapse.

8 In view of the above, the appeal filed by the Revenue as far as the allowing of adjustment/ reversal of CENVAT credit of Rs.1,09,76,108/- is concerned, is allowed by way of remand in terms of the above observations.

(Order pronounced in the open court on 12/02/2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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