CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 55119 of 2013

[Arising out of Order-in-Appeal No. 174-175/CE/CHD-1/2012 dated 04.10.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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

VERSUS

M/s Surya Pharmaceutical Limited ......**Respondent**
Plot No.50-51, EPIP, Phase-I, Jharmajrmi, Baddi,
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.60136/2025

DATE OF HEARING: 16.01.2025
DATE OF DECISION: 12.02.2025

P. ANJANI KUMAR:

The respondents, M/s Surya Pharmaceuticals Ltd. are engaged in the manufacture and export of menthol, menthone, terpene, peppermint oil, de-mentholized peppermint oil etc; they have filed three refund/ rebate claims for the respective quarters April 2008 to December 2008 under Rule 5 of CENVAT Credit Rules, 2004. While scrutinizing the refund applications, the Department noticed that the appellants exported under Rule 19 of Central Excise Rules, 2002 under Bond; since the finished product is chargeable to NIL rate of duty for export, CENVAT credit is not admissible in terms of Rule 6(6)(vi) of CENVAT Credit Rules, 2004 and therefore, the refund of Rs. 5,17,41,226/- cannot be sanctioned to the appellants. Accordingly, three Show Cause Notices all dated 05.01.2010 were issued to the appellants and the refund claim was rejected by the OIO dated 11.05.2011. On an appeal preferred by the respondents, Commissioner (Appeals) vide impugned order dated 26.09.2012 set aside the original order and held that the refund is required to be granted to the appellants. Revenue is in appeal against the impugned order.

2. Learned Authorized Representative for the Revenue reiterates the grounds of appeal and submits that learned Commissioner has erred in granting the refund on the basis of the judgment of Drish Shoes Ltd. – 2010 (254) ELT 417 (HP) as the Special Leave Petition No.4553/2011, filed by the Revenue, is pending before the Hon'ble Apex Court; during the relevant period, the final product menthol was exempted from Central Excise Duty in terms of Notification No.04/2006 as amended by Notification No.04/2008 dated 01.03.2008; the inputs being used exclusively in the manufacture and export of exempted finished goods, sub-Rule 2 of Rule 6 of

CENVAT Credit Rules is not attracted; CBEC Circular No.754/70/2003-CX dated 09.10.2003 clarified that CENVAT credit is not admissible where any inputs are clearly identifiable as used only in or in relation to the manufacture of final products which are exempt from payment of duty. Learned Authorized Representative further submits that the refund claims have been filed under Rule 5 of the CENVAT Credit Rules, 2004, refund has been sanctioned under Rule 11B of Central Excise Act, 1944; Rule 5 clearly states that no refund of credit shall be allowed if the manufacturer or provider of output service avails drawback or claims rebate.

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. Having gone through the records of the case, the submissions of the learned Authorized Representative, we find that learned Commissioner decided the issue relying on the case of Repro India Ltd. – 2009 (235) ELT 614 (Bom.) and the case of Drish Shoes (supra). We find that learned Commissioner (Appeals) has analyzed the facts of the case and has observed as follows:

> 13. The only ground for denial of refund, according to the impugned order, was that some of the DIMO used for the manufacture of export goods, i.e, menthol, was contained in the recoverable waste, which had arisen during the

process of manufacture of those goods. To the extent the DTMO was contained in such waste, which had not been exported, refund claim attributable to the Cenvat of such inputs was, according to the adjudicating authority, not admissible to them.

14. I do not agree to the reasoning of the adjudicating authority. The language of the Rule 5 and also Notification No. 5/2006 supra is unambiguous and it cannot be read down to insert a condition that is not there either in the Rule or in the Notification. All manufacturing processes do inevitably involve some wastage of raw materials. Such wastage does not, however, mean that the wasted raw materials have not been used in the manufacturing process.

15. In this case, it has been mentioned in the impugned order that the formula of input output ratio had been duly verified and approved by the jurisdictional Assistant Commissioner. Central Excise, on 5.8.2009. The finished goods exported by the appellant had been admittedly manufactured in accordance with this approved input-output ratio. There was no reason, therefore, to deny a part of the refund claim on the ground of wastage of inputs and to make the grant of refund conditional on the export of that waste as well. Export of recoverable waste was certainly not a requirement of the Rule.

16. In this regard, it is further observed that the CBEC vide Circular F. No. B-4/7/2000-TRU, dated 3-4-2000 has also clarified that the Cenvat credit shall be admissible in respect of the amount of inputs contained in any of the aforesaid waste, refuse or by-product. The relevant portion is reproduced below:

> 5. Some doubts have been raised whether CENVAT credit would be admissible on the part of input that is contained in any waste, refuse or by-product. In this context it is clarified that CENVAT credit shall be admissible in respect of the amount of inputs contained in any of the aforesaid waste, refuse or by-product. Similarly. CENVAT should not be denied if the inputs are used in any

> intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly.
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> 17. There is no finding recorded in the impugned orders as to how the recoverable waste in question had been used or cleared by the appellant. In any case that issue is totally independent of the claims for refund and could not determine the admissibility of those claims. The contention of the appellant, therefore, that the refund of whole of the duty paid on inputs used in the manufacture of exported goods is admissible irrespective of the fact that some waste is generated during the manufacturing process, is entirely correct.

5. We find that the issue is squarely covered by the judgment in the case of M/s Repro India Ltd. (supra) and M/s Drish Shoes Ltd. (supra), wherein it was held that CENVAT credit is admissible even if the raw material is utilized in the manufacture and export of exempted goods. We find that Hon'ble Apex Court has upheld [2018(360) ELT A191 (SC)] the judgment of Hon'ble High Court of Himachal Pradesh in the case of M/s Drish Shoes (supra). The principle adopted by the Hon'ble Courts was that goods are to be exported and not the taxes. Learned Authorized Representative for the appellant-Revenue submits that, learned Commissioner should not have relied upon M/s Drish Shoes Ltd. (supra) as the SLP filed by the Revenue against the order of the Hon'ble High Court was pending before the Hon'ble Apex Court. We find that Hon'ble Apex

Court did not stay the operation of the Hon'ble High Court's order and therefore to that extent, there is no infirmity in the order passed by the learned Commissioner. We find that as of now, Hon'ble Apex Court - *2018 (360) E.L.T. A191 (S.C.)]* has dismissed the SLP filed by the Revenue and thus, the order of the Hon'ble High Court has attained finality. Therefore, we find that there is no reason as to interfere with the impugned order.

6. In view of the above, the appeal filed by the Revenue is liable to be dismissed and we do so.

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

(SOMESH ARORA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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