CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I
Date of hearing/Decision:23.03.2018

Appeal No. E/758/2012-Ex

(Arising out of OIO no.80/CE/CHD-II/2011 dt.14.12.2011 passed by the CCE, Chandigarh)

M/s. Ind-Swift Laboratories Ltd **Appellant**

Vs.
CCE, Chandigarh-II **Respondent**

Present for the Appellant:Shri Abhinav Kansal/Veer Singh, Advocates
Present for the Respondent: Shri Tarun Kumar, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)

FINAL ORDER NO.62328/2018
PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the Cenvat credit has been denied on the inputs used in the export and along with interest and the penalty is also imposed on the appellant.

2. The facts of the case are that the appellant is manufacturer of bulk drugs, DMO, Terpenes, and Menthene and Peppermint oil etc. and exempted goods, namely Menthol and Menthol Crystals. As per Budget, 2008, Menthol and Menthol Crystals were exempted from payment of duty vide Notification No.4/2008-CE dated 1.3.2008 by inserting entries No.54A and 54B in the said notification. The appellant is availing Cenvat credit facility on the inputs and capital goods which used in or in relation to manufacture of final products. During the course of audit, it was observed that in the month of

March, 2008, the appellant had effected clearances of their finished goods i.e. Menthol and Menthol Crystals under exemption but failed to pay an amount equivalent to Cenvat credit taken by them in respect of inputs i.e. Menthol Flakes used in the manufacture of their final products. It was alleged that as the appellant is manufacturing exempted goods, therefore, the appellant is not entitled to avail Cenvat credit on the goods used in the manufacture of exempted goods and required to pay back/reverse Cenvat credit. Therefore, the proceedings were initiated against the appellant to deny Cenvat credit goods used in the manufacture of exempted goods by way of issuance of show cause notice. The matter was adjudicated, Cenvat credit was denied along with interest and consequently, duty was confirmed along with interest and penalty was also imposed under Rule 15 of Cenvat Credit Rules read with Section 11AC of the Act.

3. Ld. Counsel for the appellant submits that in this case the Revenue has alleged that the appellant has utilized inadmissible Cenvat credit taken on inputs (Menthol Flakes) which are used in the manufacture of exempted goods in terms of Rules 11 (3) (iii). It is his contention of the Ld. Counsel that this is a matter of fact on 1.3.2008, the Menthol and Menthol Crystals were only exempted from payment of duty whereas DMO and peppermint oil were still left as excisable. DMO and peppermint oil were later exempted from the duty in February, 2010. Meaning thereby, in March, 2008, the appellant was using menthol flakes in the manufacture of menthol/crystals as well as DMO and peppermint oil. The Cenvat credit is governed by the provisions of the Cenvat Credit Rules, 2004 and in any case, Rule 11, cannot be read in isolation and in ignorance

of Rule 6 of Cenvat Credit Rules. Therefore, Rule 11 which is transitional provision should be read with Rule 6. There is nothing in Rules to say that the provisions of Rule 11 will eclipse the provisions of the Rule 6 and both the provisions have to be read parallel. In view of this to hold that a particular product is exempted or not, the resort shall be made to Rule 6. Once it is established that the product of the appellant does not fall under exempted goods, there will be no application of Rule 11.

4. It is further submitted that it is a matter of fact that the appellant had executed a letter of undertaking/bond which was duly accepted by the jurisdictional Assistant Commissioner, Central Excise. Therefore, in terms of Rule 6 (6), the appellant is not required to reverse Cenvat credit for the goods cleared for export under bond. In that circumstance, the appellant is not required to reverse Cenvat credit and the said issue has been examined by this Tribunal in the case of Commissioner of Customs (Export), Nhava Sheva vs. Sharp Menthol India Limited-2010 (252)ELT 536 (Tri.-Mum.) wherein this Tribunal has held that Rule 11(3)(ii) is only a transitional provision without any non abstain clause and is not an overriding provisions to erode the benefits conferred vide Rule (3), (4), (5) and (6) of the Cenvat Credit Rules, 2004. Moreover, as per Rule 6(1) and Rule 11(3)(iii) also takes into account in a situation where the inputs are meant for use exclusively in manufacture of such final product, which become exempted, and do not envisage a special situation like in the instant case, where the common duty paid inputs are received for manufacture of both dutiable as well as exempted goods for export. The provisions of Rule 6(6)(v) are the specific rules, which covers the

situation as in the instant case, and thus the Cenvat credit of duty paid on dutiable was correctly held as admissible. Against the said decision, the Revenue filed writ petition no.1850 of 2011 which has been dismissed by the Hon'ble Bombay High Court reported in 2011 (270) ELT 212 (Bom), which has been affirmed by the Hon'ble Supreme Court reported in 2015 (32) ELT A-105 (SC). In that circumstance, the impugned order is to be set aside.

5. Heard both sides and perused the records.

6. We find that on identical issue in the case of Sharp Menthol India Limited wherein the facts of the case are as under:-

> **"2.**The brief facts of the case are that the respondent is a manufacturer registered with the Central Excise for the manufacture and export of Menthol Crystals BP/USP and Flavouring Material (Mint Blends, Rectified Pepermint Oil, Flavours and Fragrances etc.). The duty paid inputs received by the respondent were either used in manufacturing flavouring material, or as a common input for manufacture of Menthol Crystal BP/USP and Flavouring material.
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> **3.**It is an admitted fact that, on 1-3-2008 Menthol Crystal and Menthol BP/USP, which were among the several final products manufactured by the respondent, became exempt from duty under Notification No. 4/08-C.E. dated 1-3-08. Thus, duty paid common inputs were now meant for manufacture of exempted (Menthol Crystal BP/USP) as well as dutiable (Flavouring material) final products.
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> **4.**On 9-9-08, a show cause notice was issued to the respondent by the Ld. Commissioner of Central Excise, Delhi-I proposing demands under Rule 11(3) (ii) read with Rule 6 of the Cenvat Credit Rules, 2004, for availing inadmissible credit. Similar show cause notice was issued for subsequent period also. These show cause notices are pending for adjudication.
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> **5.**It is alleged that the respondent is become liable to pay back the Cenvat credit equivalent to the duty paid on all the inputs which were either lying in stock or in the form of work in progress or contained in the exempted finished products lying in stock on 1-3-2008 and the balance was to be lapsed. It was further alleged that the respondent was not entitled to take any further credit, and required the respondent to pay up

the entire Cenvat credit availed by it between March, 2008 and July, 2008, on receipt of duty paid goods, irrespective of the fact that the exempted goods manufactured were exported by the respondent.

6.During pendency of the above said show cause notices, two more show cause notices were issued from the office of Maritime Commissioner, proposing to deny to the respondent rebate claims preferred by it under Rule 18 of the Central Excise Rule, 2002. These show cause notices were issued on the premise that the Cenvat Credit, which was utilized by the respondent towards payment of duty, of which rebate had been claimed was not available to it as per the show cause notice dated 9-9-08 (supra) issued by the Ld. Commissioner of Central Excise, Delhi."

And this Tribunal has examined the issue and observed as under:-

"25. After examining and submissions made by the parties, it is clear that Rule 11(3)(ii) is only a transitional provision without any non abstain clause and is not an overriding provisions to erode the benefits conferred vide Rule (3), (4), (5) and (6) of the Cenvat Credit Rules, 2004. Moreover, as per Rule 6(1) and Rule 11(3)(ii) also takes into account in a situation where the inputs are meant for use exclusively in manufacture of such final product, which become exempted, and do not envisage a special situation like in the instant case, where the common duty paid inputs are received for manufacture of both dutiable as well as exempted goods for export. The provisions of Rule 6(6)(v) are the specific rules, which covers the situation as in the instant case, and thus the Cenvat credit of duty paid on dutiable was correctly held as admissible by the Ld. Commissioner (Appeals)."

The said order has attained finality by the order of Supreme Court, in that circumstance, we hold that the issue is no more res integra.

7. Similar view has been taken by the Hon'ble Himachal Pradesh High Court in the case of CCE vs. Drish Shoes Limited-2010 (254) ELT 417 (HP) wherein Hon'ble High Court has held that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of

such goods, if the goods are exported. Admittedly, in the case in hand, the goods which became exempted has been exported by the appellant, therefore, the appellant is not required to reverse the Cenvat credit in terms of Rule 6. Therefore, we do not find any merit in the impugned order and accordingly the same is set aside. In the result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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