CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGINAL BENCH AT CHANDIGARH

Court NO.I

Appeal No. E/60446/2016-Ex

(Arising out of OIO No.27/MV/Pr.CCE/2015-16 dt.8.7.2016 passed by the Principal Commissioner, Central Excise, NO.36-37, Sector 32, Near Medanta Hospital, Gurgaon, Haryana)

Hema Engineering Industries Ltd. **Appellant**
(I69 K.M.Stone, NH-8, Dharuhera, Rewari Haryana)

Vs.

Principal Commissioner, Central Excise, Gurgaon-II **Respondent**
(Plot NO.36-37, Sector 32, Near Medanta Hospital, Gurgaon, Haryana)

Present for the Appellant: Shri P.K.Mittal, Advocate
Present for the Respondent: Shri Atul Kumar, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60652/2019

Date of hearing/Decision: 22.05.2019

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand in terms of Rule 6(3) of Cenvat Credit Rules, 2004 has been confirmed against the appellant.

2. The facts of the case are that the appellant is engaged in the manufacture of excisable goods and also undertaken the activity of job work in terms of Notification No.214/86-CE dt.25.3.1986. As per the said notification, the principal manufacture on whose behalf the appellant has manufactured the goods has been undertaken to pay duty on the goods manufactured by the appellant. To that extent, the appellant has necessary permission in terms of the said notification. The Revenue has entertained a view that as the appellant is not paying duty in terms of Notification 214/86-CE ibid on job worked goods, therefore, the appellant is required to pay

duty on the amount equal to 8% of clearance made by them on job worked goods in terms of Rule 6(3) of Cenvat Credit Rules, 2004. In these sets of facts, a show cause notice was issued to the appellant which was adjudicated, the demand of amount of equal to 8% of clearance made by them on job worked goods was confirmed along with interest and equivalent amount of penalty was also imposed. Against the said order, the appellant is before us.

3. The facts of the case are not in dispute by either side that the appellant is engaged in the manufacture of excisable goods and also has undertaken the job work in terms of Notification 214/86-CE ibid. As the appellant has engaged in the activity of doing job work, therefore, the appellant is not paying duty but the principal manufacturer is paying duty on the goods manufactured by the appellant. In that circumstance, it cannot be said, the appellant is manufacturer of dutiable as well as exempted goods so the appellant is not manufacturing any exempted goods, therefore, in terms of provisions of Rule 6 (3) of Cenvat Credit Rules, 2004 is not applicable to the facts of this case. Consequently, the demand under Rule 6(3) of Cenvat Credit Rules, 2004 cannot be demanded from the appellant as held by this Tribunal in the case of M/s. Eurotherm Hema Radiators India Limited vide Final No.60045/2019 dt.18.1.20019 wherein this Tribunal has observed as under:-

> "4.On careful consideration of the submissions made by both sides, I find that the issue before me is that whether in the facts and circumstances of the case, the provisions of Rule 6 (3) of Cenvat Credit Rules, 2004 are applicable to the facts of the present case or not? Admittedly, in this case, the appellant is manufacturing dutiable goods on their behalf and on behalf of their principal manufacturer and not paying duty in terms of Notification No.214/86-CE. The provisions of Rule 6(3) is applicable when the appellant is manufacturing dutiable goods as well exempted goods and as per the facts on record, the appellant is manufacturing the dutiable goods, therefore, the provisions of Rule 6(3) of Cenvat Credit Rules, 2004 are not applicable to the facts of this case. In that circumstance, the proceedings against

> the appellant are against the provisions of law. Therefore, the impugned order is not sustainable and accordingly, the same is set aside."

4. In view of the above, we hold that the provisions of Rule 6(3) of Cenvat Credit Rules, 2004 are not applicable to the facts of this case. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(operative part of order was pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

mk