CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGIONAL BENCH AT CHANDIGARH
E-HEARING
SINGLE MEMBER BENCH

Appeal No. E/60354/2020

(Arising out OIA No.CHD-EXCUS-001-APP-52-2020-21 dt,23,08,2020 passed by the Commissioner (Appeals),CGST, Plot NO.19,C.R.Building, Sector 17C, Chandigarh)

M/s. Torrent Pharmaceuticals Limited **Appellant**
(Village Bhud, MakhnuMajra Tehsil Nalagarh, Baddi Dist. Solan, H.P.)

Vs.

Commissioner of CGST, Shimla **Respondent**
(Ground Floor & 1st Floor, Commercial Parking Complex, Chota Shimla, Shimla, H.P.)

Present for the Appellant: Shri Sridev Vyas,Advocate
Present for the Respondent: Shri H.S.Brar, AR

Date of hearing: 27.05.2021
Date of decision:27.05.2021

FINAL ORDER NO. 60850 /2021

Per:Ashok Jindal

The appellant is in appeal against the impugned order wherein the credit has been denied in terms of Notification No.13/2016-CE (NT) 1.3.2016.

2. The facts of the case are that the appellant is located in the State of Himachal Pradesh and availing the benefit of area-based exemption. The appellant purchased certain capital goods which were installed during the month of Nov.15 to March, 2016. With effect from 8.11.2015, the appellant opted out exemption availed under Notification No.49/2003-CE dated 10.6.2003 and started manufacturing dutiable goods which were cleared on payment of

duty. The credit was availed on these capital goods during the period March, 2016 to April, 2016 in terms of Rule 3 of the Cenvet Credit Rules,2004. Notification NO.13/16-CE dated 1.3.2016 came into force which bars from availing credit on capital goods used in the manufacture of exempted goods or providing exempted services from the date of starting commercial production other than final goods which exempted from whole of duty leviable thereon. Therefore, a show cause notice was issued to the appellant on 2.3.2017 for reversal of credit taken on capital goods. The matter was adjudicated and the demand on account of denial of credit was confirmed along with interest and equivalent amount of penalty was also imposed. Against this said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that although they have purchased capital goods during April, 2015 but the goods were installed in the month of March, 2016 and their final product was dutiable, therefore, they are entitled to cenvet credit on the capital goods which were used in the manufacture of dutiable goods in terms of Rule 3 of the cenvet credit Rules,2004. He further submits that although Notification No.13/16-CE dated 1.3.2016 bars on availing credit on capital goods which were used exclusively for manufacture of exempted goods. It is his contention that by using capital goods in question they have not manufactured exempted goods, therefore, the provisions of Notification No.13/16-CE dated 1.3.2016 is not applicable to the facts of this case. He relied on the decision of this Tribunal in the case of Welspun India Limited vs. CCE, Surat-2019 (9) TMI 885, which has been followed in the case of Sutlej Textiles &

Industries Limited vs. CCE, Surat-2020 (5) TMI 95. He also relied on the decision of this Tribunal in the case of International Cylinders Pvt.Ltd. vs. CCE & ST -2019 (6) TMI 316.

4. On the other hand, Ld.AR opposed the contention of the Ld.Counsel and submits that in the case of Welspun India Limited (supra) relied upon by the appellant subsequent as capital goods purchased by the appellant during the period 2015 to November, 2015 when they exclusively fully exempted goods, they are not entitled to Notification No.13/16-CE dated 1.3.2016. The said notification is applicable prospectively and not retrospectively.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both sides, I find that the credit is available to the assessee on capital goods in terms of Rule 3 of Cenvet Credit Rules, 2004 if the said goods used in the manufacture of dutiable goods. However, these capital goods have been used for manufacture of dutiable goods, in that circumstance, the assessee is entitled to take credit. Admittedly, the facts are not in dispute that these goods have been installed during the period November, 2015 to March, 2016, the appellant opted out ofarea based exemption which clearly indicates that the appellant used capital goods for manufacture of dutiable goods. In that circumstance, the provision of Notification No.13/16-CE dated 1.3.2016 are not applicable to the facts of the case. It is admitted fact that the goods have been used by the manufacture of dutiable goods, therefore, in terms of Rule 3 of the Cenvet Credit Rule,2004 the

appellant is entitled to avail credit. The case law relied upon by the Ld. counsel have no relevance, therefore, the same cannot be applicable to the facts of this case.

7. Therefore, I do not find any merit in the impugned order, the same is set aside and the appeal is allowed with consequential relief, if any.

(dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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