

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

(1) EXCISE APPEAL No.42338 OF 2017

(Arising out of Order-in-Appeal No.70/2017 TRY CEX dated 30.08.2017 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore @ Tiruchirappalli, No.1, Williams Road Cantonment, Trichirapalli-620 001)

M/s.The RAMCO CEMENTS LIMITED

.... Appellant

Alathiyur Works,
PAC Ramaswamy Raja Nagar,
Cement Nagar post
Ariyalur District 621 730.

Versus

The Commissioner of GST & Central Excise, ... Respondent

Trichy Commissionerate
No.1, Williams road, Cantonment,
Tiruchirappalli 620 001.

(2) EXCISE APPEAL No.41843 OF 2018

(Arising out of Order-in-Appeal No.108/2018-TRY (CEX) dated 19.04.2018 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore @ Tiruchirappalli , No.1, Williams Road Cantonment, Trichirapalli-620 001)

M/s.The RAMCO CEMENTS LIMITED

.... Appellant

Govindhapuram Works,
Ariyalur – Senthurai Road,
Ariyalur District 621 713.

Versus

The Commissioner of GST & Central Excise, ...Respondent

Trichy Commissionerate
No.1, Williams road, Cantonment,
Tiruchirappalli 620 001.

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 Excise Appeal No.42232 of 2018
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(3) EXCISE APPEAL No.42232 OF 2018

(Arising out of Order-in-Appeal No.127/2018-TRY (CEX) dated 28.06.2018 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore @ Tiruchirappalli , No.1, Williams Road Cantonment, Trichirapalli-620 001)

M/s.The RAMCO CEMENTS LIMITED

.... Appellant

Alathiyur Works,
 PAC Ramaswamy Raja Nagar,
 Cement Nagar post
 Ariyalur District 621 730.

Versus

The Commissioner of GST & Central Excise,

...Respondent

Trichy Commissionerate
 No.1, Williams road, Cantonment,
 Tiruchirappalli 620 001.

(4) EXCISE APPEAL No.41408 OF 2019

(Arising out of Order-in-Appeal No.116/2019-TRY (CX) dated 29.05.2019 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore @ Tiruchirappalli No.1, Williams Road Cantonment, Trichirapalli-620 001)

M/s. The RAMCO CEMENTS LIMITED

.... Appellant

Govindhapuram Works,
 Ariyalur – Senthurai Road,
 Ariyalur District 621 713.

Versus

The Commissioner of GST & Central Excise,

...Respondent

Trichy Commissionerate
 No.1, Williams road, Cantonment,
 Tiruchirappalli 620 001.

APPEARANCE:

Mr. R Parthasarathy, Consultant
 For the Appellant

Mr. N. Sathyanarayanan, Assistant Commissioner (A.R)
 For the Respondent

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CORAM:

HON'BLE MS. SULEKHA BEEVI. C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 21.12.2023

DATE OF DECISION: 26.02.2024

FINAL ORDER No.40299-40302/2024

ORDER: Per Ms. SULEKHA BEEVI. C.S.

The issue involved in all these appeals being the same, they were heard together and are disposed of by this common order.

1. Brief facts are that the appellant is engaged in the manufacture of OPC & PPC Cement, Cement clinkers and are registered with the Central Excise Department. The appellant has cement manufacturing plants at Alathiyur, Ariyalur and R.R.Nagar, (Virudhunagar) all of which are situated in Tamil Nadu. The appellant obtains lime stone from their mines for which they use inputs such as explosives and lubricants (in crusher units) and input services like Site formation services, Goods Transport Agency services, and Manpower Supply services. The appellant availed credit of duty paid on inputs (explosives, lubricants etc.,) and service tax paid on input services, as under Rule 3 of Cenvat Credit Rules, 2004.

1.1 The units at Alathiyur, Ariyalur, R.R.Nagar have separate Central Excise Registration. The appellant also owns several mines and for convenience, the limestone required by a plant is procured from the nearby mine. The Alathiyur plant has taken credit of duty/tax paid on inputs/input services used in mines adjoining to it.

So also is the case with other manufacturing plants. Sometimes, when adequate quantity/quality of lime stones are not available in the respective mines, the appellant transfers lime stone from other plant. During the disputed period the Alathiyur plant (E/42338/2017, E/42232/2018) and Ariyalur plant (E/41843/2018, E/41408/2019) transferred lime stone to other plants. The lime stone is an input for manufacture of final product, viz., Cement.

1.2 As per Rule 2(d) of Cenvat Credit Rules, "exempted goods" means 'excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to 'Nil' rate of duty'. The lime stone is exempted good and attracts nil rate of duty. According to department, the lime stone being manufactured by using inputs and input services, would also become a final product as mentioned in Rule 6(2)/Rule 6(3) of Cenvat Credit Rules. The clearance of lime stone from Alathiyur/Ariyalur plants to other plants is a clearance of final product which does not necessarily constitute 'sale'. That to attract the provisions of Rule 6(2) and Rule 6(3) of the Cenvat Credit Rules, 2004, it is not required that a transaction must amount to sale. Even though the appellant stock transferred the lime stone to other units, the appellant ought to have maintained separate accounts for the common inputs/input services availed in respect of lime stone which is cleared as exempted goods (final products) to their own plants.

1.3 Again, the Cenvat Credit Rules, 2004 as well as Central Excise Act, 1944 are location specific. This is seen from the requirement to

take out separate registration for each of the plants of the same manufacturer located in different premises. The credit taken in one plant cannot be transferred to another plant of the same manufacturer. Each registered premises is a distinct unit for administration of Central Excise law and the nature of each removal of excisable goods is determined with respect of each such distinct unit. Therefore, the lime stone cleared by Ariyalur/Alathiyur Plant is a final product for that Plant, but an input for the Plant that receives the lime stone by stock transfer.

1.4 The department was of the view that the appellant not having maintained separate accounts at their Alathiyur/Ariyalur Plants, from where lime stone was stock transferred to other units, is liable to reverse proportionate credit availed on such quantity of lime stone, so transferred as exempted finished product. The appellant having not maintained separate accounts nor reversed the credit in respect of exempted final products, show cause notices for different periods were issued proposing to recover the amount of wrongly availed credit with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence these appeals.

2. The Learned Consultant, Shri. R.Parthasarathy appeared and argued for the appellant. Ld. Consultant made the following submissions:

2.1 The appellant availed Cenvat credit on Inputs, Capital goods

and Input Services used in the mines and in the cement manufacturing plants. The appellant has mines nearer to all the three plants and all the mines are **captive mines** of the appellants and they had never sold any limestone to any other cement manufacturer. For operational convenience, and keeping in mind the cost of transportation of limestone from the mines to the respective plants, the appellant used to receive limestone consignments generally from their captive mines located nearer to the respective cement manufacturing plants.

2.2 As there were instances of shortage of the required quantity of lime stones from the captive mines nearer to their cement manufacturing plants, between **2010-11 to June 2017**, they transferred limestone from their captive mines located nearer to Alathiyur plant to their Cement manufacturing plants located in Ariyalur and also in RR nagar plant located in Virudhunagar District. Likewise, during the above period, limestone consignments were also transferred from their captive mines nearer to Ariyalur Plant to RR nagar. As limestone falling under the heading 25210010/25210090 attracted **NIL** duty as per the **CETA**, 1985, the clearances of the limestone consignments were effected under cover of normal delivery challan and without payment of any duty. The appellant submits that limestone is the principal raw material for the manufacture of cement and it is extracted from the limestone mines and the said lime stones were not subjected to any other manufacturing

operations.

2.3 The appellant submits that "**LIMESTONE**" is only a raw material for manufacture of cement and merely because it was included in Central Excise Tariff Act, 1985 under Chapter Heading 2521 with NIL Duty, it should not have been construed by the department as "**exempted final product**" so as to attract the mischief of Rule 6(3) of CCR Rules, which necessitated payment of 5% / 6% of the value of exempted final product.

2.4 The appellant contends that limestone extracted from the mines is the basic raw material for cement and the said limestone is subjected to further operations such as crushing and other manufacturing operations in the cement plant so as to convert it in to **Clinker** which in turn, is subjected to further manufacturing operations so as to bring in to existence, the final product, viz. **Cement**. Irrespective of the place of use of limestone, the final products, in their case, are clinker and cement which attracted payment of duty at the time of clearances. The cement plants are located at Alathiyur, RR Nagar, Ariyallur, and are integral part of appellant company. Therefore, the mines adjoining the respective cement plant are required to be treated as captive mines itself. In other words, lime stone irrespective of the plants in which it is used cannot be treated as a final product.

2.5 The appellant submits that limestone, wherever they are used in cement plant, are at the most "**intermediate goods**" as held by Hon'ble Apex Court in the cases of **JAYPEE REWA**

CEMENTS VS CCE, MP (2001-133-ELT-3-SC) wherein the Hon'ble Apex Court in Para 13 of their Judgement made the following observations:

"On the explosives, a duty had been paid and the appellants would be entitled to claim credit because the explosives were used for the manufacture of **intermediate product**, namely, limestone, which in turn, was used for manufacture of cement."

In view of the above observations of the Apex Court that limestone is intermediate product, it is erroneous to conclude that limestone is a final product so as to bring the stock transfer of limestone under the provisions of the Rule 6(3) of the Cenvat Credit Rules. The appellant further submits that the view in the above case was affirmed by Hon'ble Supreme Court in **VIKRAM CEMENTS vs CCE, INDORE (2006-194-ELT-3 SC)**

2.6 The appellant contends that in order to come under the provisions of the Rule 6(3) of the Cenvat Credit Rules, a manufacturer has to produce two final products, of which, one should be dutiable and the other should be an exempted final product. In the Show Cause Notice, in the Order-in-Original as well as in the Order-in-Appeal, the reference is confined to only one alleged final product, namely, Limestone, which, as per the Rulings of the Apex Court cited supra, are at best to be construed as intermediate goods only. The appellant contends that merely because limestone attracted NIL Duty, the provisions of Rule 6(3) are not applicable in their case and it is not possible to treat

limestone as “**FULLY EXEMPTED FINAL PRODUCT**”. To support this contention that in order to attract Rule 6(3) of the CCR Rules, a manufacturer has to produce two different final products, (one dutiable and another exempted). The Ld. Consultant draw assistance upon the decision of CESTAT, Chennai in **Commissioner of Central Excise vs. DCW (2009-234-ELT--163-TRI Chennai)**. It is submitted that in para 2 it was clearly mentioned, that to apply the requirement of maintaining separate account there should be two final products. Para 2 reads as under:

“for the provisions of Rule 57 CC (1) to apply, there should be one final product, which is dutiable and another final product, which is exempt from payment of duty or chargeable to Nil rate of duty. Invariably, there must be two different final products.”

2.7 The appellants submit that the above decision of Tribunal was appealed before Hon’ble Madras High Court and the Hon’ble High Court in **CCE Tirunelveli vs DCW (2011-274-ELT- 183-MAD)**, dismissed the appeal of the Department and made the following observations:

“2. The above two manufactured goods are excisable goods during the period in dispute and a major part of the manufactured excisable goods were cleared on payment of duty. A small part was cleared without payment of duty to M/s Space Centre and M/s Bhabha Atomic Research Centre. The said clearance was covered under Notification 19/97 CE dated 1.3.97, which exempts payment of excise duty in respect of the goods cleared to the above two centres. For the provisions of Rule 57 CC (1) to apply, there should be one final product which is dutiable and another final product, which is exempted from payment of duty or chargeable to NIL rate of duty.”

The Hon'ble Apex Court in the case of **Union of India Vs Hindustan Zinc Limited (2014-303-ELT- 321-SC)** observed that a waste/by product is different from final product, and that Rule 57CC and Rule 6 of Modvat/Cenvat Credit Rules would apply only when two final products emerges out of common inputs/input services, one dutiable and the other exempted.

2.8 As the requirement of manufacturing two final products being a pre requisite, it is patently incorrect on the part of the department to conclude that the provisions of the Rule 6 (3) would be applicable for stock transfer of limestone consignments to other plants of the appellants. In effect, in as much as the fact of absence of two final products, having been manufactured by the appellant the quantification of demand under Rule 6(3) of the CCR Rules, is contrary to the ratio laid down in the above decisions.

2.9 The appellants further submit that the law laid down in **DCW** case (supra) was followed in the following cases :

a. CCE Puducherry vs Tanfac Industries Ltd. (2010 -262 -ELT- 1123 -TRI Chennai) wherein in para 2 it was observed:

"2. there is no dispute that both the products are excisable /dutiable. It is only when the same goods are cleared to certain categories of customers stipulated in the Notification above mentioned that they do not attract duty liability. This does not make the goods in question non dutiable or exempt. I am fortified in my view by the decisions of Tribunal in Greaves Ltd. vs Commr. of Central Excise, Chennai (2007-211-ELT-563-TRI Chennai and Commr.of Central Excise, Madurai vs DCW (2009-234-ELT-163-TRI Chennai). The above decisions are in the context of Rule 57 CC of Central Excise Rules, 1944. Rule 6, which is the relevant rule in the present case, is pari-materia with Rule 57 CC in the sense that both require manufacture of two

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categories of product, namely, one excisable and the other exempted.

b. Greaves Ltd. vs Commr.of Central Excise, Chennai (2007-211- ELT-563 (Tri. Chennai))

3. After considering the grounds of the appeal, and the submissions of learned SDR, we have no reason to sustain the impugned order. Rule 57CC ibid as applicable to the date of clearance of the subject goods reads as follows:-

Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty and the manufacturer takes credit of these specified duty on any inputs (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products whether directly or indirectly or and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule 9 are complied with, pay an amount equal to 8 per cent of the price (excluding sales tax and other taxes if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

The case of the appellants is that a final product which is chargeable to duty but which could also be cleared without payment of duty under certain circumstances or on the fulfilment of certain conditions under the provisions of an exemption Notification can hardly be treated as "any other final product" as clearance under an exemption Notification cannot render the product different from the same product cleared on payment of duty. This case of the appellants is in keeping with the provisions of Rule 57CC. This Rule would apply to a manufacturer who was engaged in the manufacture of a final product which was chargeable to duty and any other final product which was exempt from the whole of duty of excise leviable thereof or was chargeable to 'nil' rate of duty. In the present case, the appellants were clearing EOT cranes on payment of duty to buyers other than SHAR at the material time. Only clearances of the product to SHAR were exempt from payment of duty under Notification. The product remained the same. In such a situation, Rule 57CC did not apply.

2.10 The appellants submit that for the period from **Jan.2017 to June 2017**, similar proceedings were initiated against appellant and adjudicated by the Jurisdictional authorities

and on appeal, the **Commissioner of Central Excise (Appeals) Tiruchirappalli**, by his **Order in Appeal No. 5/2020 TRY (CX) dated 31.1.2020** set aside the order of the adjudicating authority with a finding that in relation to stock transfer of limestone to other units of the appellants, the provisions of the Rule 6(3) of the CCR Rules, would not be attracted.

2.11 The appellant contends that in their case limestone transferred to other units is not a final product attracting duty of excise and the said limestone was only a raw material or intermediary goods for manufacture of final products, namely, clinker or cement. The appellant contends that the clearance of limestone which attracted NIL Duty is outside the provisions of Rule 6(2) / Rule 6(3) of the CCR Rules and therefore, no reversal of any amount was legally required.

3. Without prejudice to their contention of inapplicability of Rule 6(3) of CCR Rules for transfer of limestone, it is submitted that the recovery proceedings ordered and confirmed in appeal are time barred as there was no suppression of facts or any intent to evade payment of duty. The clearances of limestone were covered by proper documents (delivery challans). The monthly E R 1 returns filed by the appellants did not contain any provision for incorporating particulars relating to removal of intermediate goods / raw materials attracting NIL rate of duty. Likewise, even in the E R 4 return, which were filed annually, there was no specific column for incorporation of details relating to quantity and value of limestone (which attracted NIL rate of duty) transferred to other

units of the appellants for further manufacture of dutiable final products. Therefore, it is submitted that the recovery proceedings under Rule 6(3) of CCR, if held to be legal, ought to have been confined to the normal time limit of one year contemplated under Section 11 A read with relevant provisions of CCR Rules, 2004 as it stood during the relevant period.

4. With regard to the penalty imposed and confirmed by the appellate authority, it is contended that the issue is purely interpretational in nature. The Ld. Consultant prayed that the appeal may be allowed.

5. The Learned AR, Shri N.Satyanarayanan appeared and argued for the department. The definition of exempted goods and finished products was referred by the Ld. AR to submit that when lime stone is cleared to other plants, it is an exempted product. Para 14.3 to 14.5 of the order passed by adjudicating authority was reiterated.

6. Heard both sides.

7. The issue to be decided is whether the demand raised alleging that appellant though availed common inputs/input services for manufacture of stock transferred exempted goods (lime stone) and dutiable products (Cement/Clinker) did not maintain separate accounts as required under Rule 6(2) of Cenvat Credit Rules, 2004 and are liable to pay an amount of 5%/6% of the value of exempted goods (stock transferred lime stone) as under Rule 6(3)(i) of Cenvat Credit Rules, 2004, is legal and proper.

7.1. Admittedly, the appellant is engaged in manufacture of dutiable final product, Cement/Clinker falling under Chapter Heading 25 of CETA, 1985. They use inputs like explosives and lubricants and also input services, viz; site formation services, GTA services etc., in the captive mines for the purpose of procuring lime stone which is the main raw material used in the manufacture of cement. The limestone is chargeable to 'Nil' rate of duty. The dispute has arisen as the appellant during the period stock transferred certain quantity of limestone from their Alathiyur and Ariyallur plants to other plants. These plants (Alathiyur and Ariyallur) have already availed CENVAT credit of the inputs and input services used for procurement of limestone from mines near to the Cement plants. As already stated as far as these cement plants are concerned, the limestone so procured is a raw material used for manufacture of final product, viz., Cement. According to department, when the limestone is stock transferred to another plant of the appellant, the said quantity of limestone becomes a finished product, and being chargeable to 'Nil' rate of duty, it is an exempted finished product. That therefore, the appellant ought to have maintained separate accounts for the common inputs/input services used for such exempted finished products as under sub rule (2) of Rule (6) of CCR, 2004.

7.2 For better appreciation, the definition of finished product and exempted product in Cenvat Credit Rules, 2004, are given below:

Rule 2(d) "**exempted goods** means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to 'Nil' rate of duty"

Rule 2(h) "**final products** means excisable goods manufactured or produced from input, or using input service".

7.3 The relevant provision which makes it obligatory for a manufacturer to maintain separate accounts is contained in sub rule (2) of Rule 6 of CCR, 2004. These Rules are noticed as under:

Rule 6(1) read as under:

6. (1) The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted goods, on input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

Rule 6(2) read as under:

6. (2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for –

- (a) the receipt, consumption and inventory of inputs used:-
 - (i) in or in relation to the manufacture of exempted goods;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
 - (iii) for the provision of exempted services;

- (iv) for the provision of output services excluding exempted services; and
- (b) the receipt and use of input services:-
 - (i) in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods; and their clearance up to the place of removal;
 - (iii) for the provision of exempted services; and
 - (iv) for the provision of output services excluding exempted services,
 and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

7.4 From the above provisions of law, it can be seen that a manufacturer is not allowed to avail credit of inputs/input services used for manufacture of exempted goods. If the manufacturer is using common inputs/input services for manufacture of dutiable as well as exempted goods, the manufacturer has to maintain separate accounts. If such separate accounts are not maintained, the manufacturer shall follow any one of the options available under Rule 6(3)(i) or Rule 6(3)(ii) to pay up the credit availed in respect of exempted goods.

7.5 The Learned Consultant appearing for the appellant has vehemently argued that the demand cannot sustain for the reason that the SCN mentions about limestone being an exempted finished product and does not mention as to what is the other dutiable product cleared by the appellant so as to make it obligatory to maintain separate accounts. It is argued that in order to apply sub

rule (2) of Rule 6 there should be two different final products. On perusal of the SCN, and order passed by the adjudicating authority, we find that there is a detailed discussion as to how limestone which is stock transferred to other units have to be considered as exempted final product. There is not much discussion in SCN that Cement is the other dutiable final product. This cannot be a reason for appellant not to comply with Rule 6(2) or Rule 6(3) of CCR, 2004. Undisputedly, the appellant is manufacturing and clearing Cement/Clinker which is a dutiable product. Merely because it is not specifically stated in SCN that the appellant is manufacturing Cement/Clinker which is a dutiable final product, it cannot be said that the appellant is not manufacturing any dutiable product. We find the argument of the appellant to be too flimsy to be accepted.

7.6 The reliance placed by the Learned Consultant on the decision in the case of Commissioner of Central Excise Vs DCW Ltd.,(supra), to support the above argument, according to us, is of no assistance to the appellant. In the said case, the department had raised the demand alleging that part of the caustic soda flakes were manufactured and cleared from the factory by assessee therein without payment of duty to M/s.SHARE Centre (SC) and M/s.Baba Atomic Research Centre during the period October to December 1997. A major part of the same product (caustic soda flakes) was cleared on payment of duty to other buyers. The Tribunal held that Rule 57CC of the erstwhile Modvat rules would not come into application as the final products considered as dutiable and exempted by the department is the same (caustic soda flakes).

Invariably, there must be two different final products. In the case on hand there are two different final products. The quantity of limestone cleared to other units is the exempted final product and Cement/Clinker is the dutiable final product. In the instant case, the final products are not one and the same and the decision in the case of DCW is not applicable. The relevant para in the case of DCW Ltd.,(supra) reads as under:

"After considering the submissions, we have found valid reason to sustain the impugned order. Though, in their cross-objections, the party has pleaded that none of the inputs specified in the SCN and the Order-in-Original can be considered to be a common input for purposes of Rule 57CC, we think, it is not necessary to address this question in as much as this case can be disposed of with reference to final products. Caustic Soda Flakes and Trichloroethylene were the final products of the respondents and both were excisable during the period of dispute. A major part of the production of either of these products was cleared on payment of duty. A small part was cleared without payment of duty to M/s.SC and M/s.BARC under Notification No.10/97-C.E. dt.1-3-97. For the provisions of Rule 57CC (I) to apply, there should be one final product which is dutiable and another final product which is exempted from payment of duty or chargeable to 'Nil' rate of duty. Invariably, there must be two different final products. It is not open to the Revenue to say that a part of the quantity of Caustic Soda Flakes manufactured and removed from the factory during the period of dispute was one final product and the remaining quantity of the same final product was "another" final product. The requirements of the Rule 57CC(I) were not met in this case, as rightly held by the lower appellate authority. The appeal fails and the same is dismissed."

7.7 In the case of Commissioner of Central Excise & Service Tax – Rajkot Vs Reliance Industries Ltd. F.O.12439-12440/2021 dated 11.10.2021 was relied by appellant. The issue considered in the said case was whether LPG removed from factory without payment of duty can be considered as an exempted final product. In the process of refining crude oil to manufacture Motor spirit, High Speed Diesel, Naphtha, which are dutiable products, LPG necessarily emerged and

was cleared without payment of duty under LPG subsidy scheme. The Tribunal noted that the assessee had no intention of manufacturing LPG and being only a byproduct, cannot be considered as an exempted final product. In the case on hand before us, the appellant uses explosives and lubricants as inputs, and GTA services, Site formation services as input services for obtaining limestone from the mines. There is a conscious act to obtain limestone and therefore, the above decision is of no assistance to appellant.

7.8 The decision of the Hon'ble Apex Court in the case of Jaypee Rewa Cement Vs Commissioner of Central Excise, MP 2001(133) ELT 3 (S.C) is referred by Ld. Consultant to argue that lime stone is only an intermediate product and cannot be considered as a final product. The issue that was considered in the said case was whether Modvat credit is eligible on explosives used for extraction of limestone which is the raw material used in manufacture of cement. The Hon'ble Court was considering the applicability of Rule 57A of erstwhile Central Excise Rules, 1944. The assessee therein contended that explosives used in the mining operation must be regarded as inputs. The Tribunal came to the conclusion that as the inputs (explosives) had not been brought into the factory and had been used in the mines outside the factory are not eligible for credit. The Hon'ble Apex Court held that even in respect of inputs used in the manufacture of intermediate product, which product is then used for manufacture of a final product (Cement) the credit is eligible. The issue in the case

on hand is not on the eligibility of credit on explosives, and not applicable. The relevant para of the judgment reads as under:

“Explosives would fall under column (2) being a tariff item in Chapter 36, the intermediate product, namely, lime stone would fall under column 3 being covered by Chapter 25; and the final product, namely, cement would also fall under Chapter 25 and would fall under column 4. The reading of Rule 57J along with the aforesaid notification can leave no manner of doubt that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of a final product, the manufacture would be allowed credit on the duty paid in respect of the input. On the explosives a duty had been paid and the appellants would be entitled to claim credit because the explosives were used for the manufacture of the intermediate product, namely, lime stone which, in turn, was used for the manufacture of cement.”

7.9 In the case of *Vikram Cement Vs Commissioner of Central Excise* 2006 (194) ELT 3(S.C.) the question that was considered was again the eligibility of credit on explosives used in captive mines. The Hon'ble Apex Court held that the credit would be eligible and that the decision in the case of *M/s.Jaypee Rewa Cement* would apply. It was also held that CENVAT Rules in effect substituted the Modvat Rules. The issue on hand is not eligibility of credit on explosives used in captive mines, and therefore not applicable.

7.10 In the case of *Vikram Cement Vs Commissioner of Central Excise, Indore* 2006 (197) ELT 145 (S.C.) the earlier view that Modvat/Cenvat credit on inputs (explosives, lubricants) is eligible was affirmed. In addition, it was held that if mines are captive mines so that they constitute one integral unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods is eligible. If the mines are not captive mines but they supply to various other cement factories of different assesses, the Modvat/Cenvat credit on

capital goods used in such mines is not available. The issue on hand is not eligibility of credit on capital goods and this decision is of no assistance to the appellant. The appellant has also argued that being captive mines when stock transferred to plants not adjoining to the captive mines, there cannot be any requirement to maintaining separate accounts as all the plants are integral part of the same company. It is to be noted that the stock transfer takes place after availment of credit on inputs/input services by one plant. For e.g., the Alathiyur plant availed credit of inputs/input service for procurement of lime stone. This quantity of lime stone is the stock transferred to another plant (Ariyallur). The credit on inputs is eligible as the lime stone is a raw material for manufacture of finished product. However, when stock transferred to another plant, that quantity of lime stone produced by use of inputs and input services become an exempted final product attracting the obligation to maintain separate accounts.

8. It is to be seen that all the units of the appellant (Ariyallur Plant, Alathiyur Plant, R.R Nagar Plant, (Virudhunagar) have separate Central Excise registrations. They file returns separately. Each registered premises is a district unit for removal of excisable goods, for availment of credit, etc. The credit availed in one plant cannot be transferred to another plant. The Ld. Consultant has argued that it is a mere stock transfer and not sale and the provisions of Rule 6(2) would not apply. Rule 6(2) does not use the word sale. It uses the word clearance. This would include stock transfer also. In case of stock transfer of dutiable goods, excise duty

paid on 110% of cost. The sister unit to which the goods are stock transferred would then be eligible to avail credit of the duty so paid. The lime stone is chargeable to 'Nil' rate of duty. The lime stone stock transferred being exempted product there is no question of payment of duty or consequent availment of credit by receiving unit. When appellant has used common inputs/input services for stock transferred limestone, appellant has to maintain separate accounts. The appellant not having maintained separate accounts and not having exercised any option under Rule 6(3) we find that the demand raised invoking Rule 6(3)(i) is legal and proper.

9. The appellant has placed before us the Order passed by Commissioner (Appeals) OIA No.5/2020-TRY (CX) dt.31.01.2020. On similar set of facts, for the period 1/2017 to 6/2017, where limestone was stock transferred/cleared to sister units, the demand confirmed by adjudicating authority was set aside by the Commissioner (Appeals) by following the decision in the case of M/s.Jaypee Rewa Cement (supra) and Vikram Cement (supra). The above decisions have already been discussed by us. We are not in agreement with the view taken by Commissioner (Appeals). From the discussions above, on merits the issue is answered against the appellant and in favour of the Revenue.

10. The Learned Consultant has argued on the ground of limitation also. The appellant had periodically filed returns and disclosed the credit availed by them. Further, the demand has been raised on the basis of the accounts maintained by the appellant. The appellant has

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maintained proper delivery challans and documents for the amount of lime stone stock transferred. There is no positive act of suppression established by the department. Further, the department for the period 1/2017 to 6/2017 has set aside the demand interpreting the issue in favour of appellant. For these reasons, we find that there are no grounds for invoking the extended period. The issue on limitation is answered in favour of appellant and against the Revenue. Being stock transfer of limestone to appellant's own units, and also of interpretational nature, we hold that the penalties are to be set aside entirely. The appellant is liable to pay duty along with interest for the normal period.

11. In the result, the impugned order is modified to the extent of upholding the demand and interest for the normal period only. The penalties for normal period is set aside. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Pronounced in court on 26.02.2024)

Sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

pr

Sd/-

(SULEKHA BEEVI. C.S.)
Member (Judicial)