CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

EXCISE APPEAL NO. 41381 of 2016

(Arising out of Order-in-Appeal No.48/2016 dated 11.04.2016 passed by Commissioner of Central Excise (Appeals-I), Coimbatore @ Madurai)

Adisankara Spinning Mills Pvt Ltd., **...Appellant**
Ottanagampatti, Vedasandur TK.,
Dindigul – 624 710.

Versus

Commissioner of Central Excise, **.... Respondent**
C.R. Buildings, Lal Bahadur Sasthri Road,
Bibikulam, Madurai – 625 002.

APPEARANCE :

Shri. M. Karthikeyan, Advocate for the Appellant
Shri. M. Selvakumar, Authorised Representatives for the Respondent

CORAM :

HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40118/2025

DATE OF HEARING: 15.01.2025
DATE OF DECISION:23.01.2025

Per AJAYAN T.V.

The appeal has been preferred by the Appellant assailing the impugned order in appeal upholding the order in original dated 25.03.2015 of the adjudicating authority. The Adjudicating Authority found that the appellant had failed to pay/reverse the amount of credit availed on input services used in the manufacture of exempted goods and hence the cenvat credit of Rs.5,99,192/- for the period 2009-10 to 2011-12 wrongly taken is liable to be recovered along with interest in terms of Rules 14 and 6(3A)(e) of Cenvat Credit Rules, 2004 (CCR Rules in short) read with Section 11A(4) of the Central Excise Act,1944 (Act in short). The adjudicating authority also imposed an equivalent amount as penalty under Rule 15(2) of CCR read with Section 11AC of the Act.

2. Briefly stated, facts are that the appellant, a manufacturer of 100% cotton yarn, during the period 2009-10 to 2011-12, cleared the goods on payment of duty under notification No.29/2004 CE dated 09.07.2004 as amended, for export claiming rebate and simultaneously availed exemption under notification No.30/2004-CE dated 09.07.2004 for the export of 100% cotton yarn and also for domestic clearances. They availed cenvat credit of duty paid on capital goods and service tax paid on input services and utilized the credit for payment of duty on finished products, i.e. on export of the said goods under claim of rebate of duty. They did not avail cenvat credit duty on inputs. The appellant used common input services in the manufacture of dutiable as well as final products which were exempted(exported). They were paying an amount of credit attributable to input services used in or in relation to the manufacture of exempted goods in terms of Rule 6(3) (ii) of CCR read with Rule 6(3A) of the rules ibid. For arriving at the amount of cenvat credit for reversal in terms of Rule 6(3A) of CCR, in so far as a manufacturer of exempted goods was concerned, the formula to be applied, as per Rule 6(3A) (b) (iii) = (E/F) multiplied by G, where E denotes total value of exempted goods manufactured and removed during the preceding financial year, F denotes the total value of dutiable and exempted goods manufactured and removed during the preceding

financial year and G denotes total Cenvat credit taken on input services during the month. The Department was of the view that the amount so paid by the appellant during the relevant period was incorrect since while quantifying the total value of exempted goods manufactured and cleared the appellant took into account the value of cotton yarn cleared without payment of duty for domestic consumption availing notification No.30/2004-CE,but did not include the value of cotton yarn exported availing exemption under the said notification, and thus adopted a lesser ratio than the actual ratio required to be adopted. Therefore, a show cause notice was issued to the appellant proposing to disallow Rs.5,99,192/- and to recover the same along with interest thereon and proposing imposition of penalty. After due process of law, the original authority issued the impugned order in original, aggrieved by which the appellant preferred the appeal, which came to be rejected by the impugned order in appeal. Aggrieved by the impugned order in appeal, the Appellant is before this Tribunal.

3. Learned Advocate Shri. Karthikeyan appeared for the appellant and submitted that the Hon'ble High Court of Bombay in the case of Repro India Ltd reported in 2009 (235) ELT s614 (Bom) has held that cenvat credit is available in respect of inputs irrespective of whether the goods manufactured and exported is either dutiable or exempted and the said decision has been followed by the Hon'ble High Court of Himachal Pradesh in the case of Drish Shoes Ltd reported in 2010 (254) ELT 417

(HP) and that these decisions were relied upon before the lower authorities who had not considered them in the proper perspective. It is his submission that identical issues involved in this case came up for decision in the case of Sri. Velayutham Spinning Mills (P) Ltd reported in 2024 (8) TMI 1207 CETAT Chennai and in the case of Sivaraj Spinning Mills reported in 2024 (8) TMI 990 Cestat Chennai wherein considering the aforesaid decisions of the Hon'ble High Court it was held that the demands cannot be sustained and the impugned orders were set aside with consequential relief. It is his submission that when the demand itself is unsustainable, the question of interest and penalty does not arise. He further submits that there is no element of wilful suppression of facts or misdeclaration and the issue is entirely interpretational and the demand raised invoking the extended period is not sustainable.

4. Ld. Authorised Representative Shri. M. Selvakumar represented the department and reiterated the reasons and resultant findings as recorded by the lower authorities.

5. Heard both sides, perused the appeal records and case laws submitted and relied on. On perusal of the impugned order in appeal as well as the case laws submitted, this Tribunal finds that a division bench of this Tribunal, in the case of ***Sivaraj Spinning Mills Pvt Ltd v. Commissioner of GST & Central Excise, Madurai, 2024 (8) TMI 990 CESTAT Chennai***, in a similar fact situation of the appellant therein clearing cotton yarn on payment of duty under Notification No. 29/2004-CE dated 09.07.2004 and

clearing cotton yarn at nil rate as per Notification No. 30/2004 – CE dated 09.07.2004, simultaneously, after discussions, has rendered the decision in favour of the appellant therein holding as under:

> " *8. On perusal of the impugned order, we find that the issue stands covered by the decision in the case of the appellant's sister concern, M/s. Sri Velayuthaswamy Spinning Mills (P) Ltd., (Unit. II) Vs. The Commissioner of GST & CE, Madurai vide Final order No. 40827/2019 dated 06.06.2019. The Tribunal after discussing the issue in detail has held that the demand alleging that the appellant has to pay amount after including the value of export clearances also was set aside. The relevant part of the decision reads as under: -*
>
> > *6.1 As narrated above, the first issue is with regard to the requirement of including the value of clearance of export made by the appellant of the goods for which the exemption under Notification No.30/2004 has been availed.*
> >
> > *6.2 Rule 6 (6) (v) of the CENVAT Credit Rules, 2004 states that provisions contained in Sub-Rules (1), (2), (3) and (4) of Rule 6 shall not be applicable in case the excisable goods removed without payment of duty are cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002. For better appreciation, the said Rule is reproduced as under :*
> >
> > *"RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service].*
> >
> > *.*
> >
> > *. .*

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either – (i) ….. (ii) …..

(iii) ….. (iv) …..

(v) cleared for export under bond in terms of the provisions of the

Central Excise Rules, 2002; or

…"

Thus, as per Rule 6 (6) (v) of the CENVAT Credit Rules, 2004, when exempted goods are cleared for export under bond, the bar under Rule 6 (1) ibid not to avail credit on common inputs/input services is not applicable.

6.3.1 The demand has been raised stating that Notification No. 42/2001 has done away with the requirement to exclude a bond when exempted goods are exported. In the case of M/s. Drish Shoes Ltd. (supra), the Hon'ble High Court has analyzed the issue as to whether credit is eligible on the duty paid on inputs and input services used in the manufacture of exempted goods which are exported. The said question of law framed by the Hon'ble High Court is quoted as under :

"(1) Whether an assessee exclusively manufacturing wholly exempted goods NIL tariff rate of duty) is eligible to avail CENVAT credit of duty paid on the said inputs and input services under Rule 6(1) of the CENVAT Credit Rules, 2002/CENVAT Credit Rules, 2004, used in the manufacture of such exempted goods, even if such goods are exported."

After a detailed discussion, the Hon'ble High Court in paragraph 20 has answered the question as under :

"20. In view of the above discussion, we hold 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. Question No. 1 is answered accordingly."

Thus, it was held that even if the exempted goods are exported, credit is eligible.

6.3.2 Now, the question is whether the amendment brought forth to do away with the requirement to execute a bond while exporting exempted goods would change the situation. The Tribunal in M/s. Jolly Board Ltd. (supra) had occasion to consider the issue post amendment vide Notification No. 42/2001. In paragraph 7 of the said judgement, the Tribunal, after referring to the decision in M/s. Repro India Ltd. (supra), has held that the requirement for execution of a bond is only a procedural one and therefore, refund cannot be denied. The facts in the said case was the denial of refund of unutilized credit under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 5/2006. The relevant paragraph is reproduced as under :

"7. The issue came up before the Hon'ble High Court of Bombay in Repro India Ltd. (supra) wherein the Hon'ble High Court held that CENVAT credit used in the manufacture of final product being exported irrespective of the fact that final product are otherwise exempted by provisions of Rule 6(6)(v) of the CENVAT Credit Rules, 2004 are applicable. Further, I find that in the case of Salzer Controls Ltd. - 2003 (160) E.L.T. 1169 and Paras Ship Breakers Ltd. this Tribunal has held that non-execution of bonds are only technical lapse. Further, in the case of Well Known Polyester Ltd. (supra) wherein the exempted goods were exported without bond or LUT by an assessee who was not even registered without bond or LUT by

an assessee who was not even registered with the Central Excise department. This Tribunal has held that execution of bond/LUT was only procedural lapse for which refund could not be denied."

The said decision in M/s. Jolly Board Ltd (supra) has been upheld by the Hon'ble High Court of Bombay as reported in 2017 (50) S.T.R. 131 (Bom.). While analyzing the issue, the Hon'ble High Court has endorsed the view taken in M/s. Drish Shoes Ltd. (supra).

6.3.3 Further, the decisions in M/s. Lavino Kapur Cottons Pvt. Ltd (supra) as well as M/s. GPI Textiles Ltd.(supra) are judgements wherein the eligibility of credit on input services for the goods exported after availing the exemption under Notification No. 30/2004 was considered. The relevant paragraph of M/s. Lavino Kapur Cottons Pvt. Ltd (supra) is noticed as under

"7. The appellant availed Cenvat credit on input service used in the manufacture of their final products. The department denied them the credit on service paid on input service on the ground that they have exported the goods while claiming the benefit of Notification 30/2004. The case of the appellant is that they are a 100% EOU and they are exporting most of their product and they have claimed the benefit of Notification 30/2004. The department has denied them Cenvat credit availed in view of the provisions of Rules 6(1) and 6(2) of the Cenvat Credit Rules, 2004, which are reproduced hereunder :-

"(1) The Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

(2) Where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input serviced, 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 receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take Cenvat credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable."

Cenvat credit has been introduced to mitigate the cascading effect of the double taxation. Therefore, if the final product is exported, it deserves for a relaxation/dispensation to enable the goods to be internationally competitive and in view of the principle that only the goods are exported and taxes are not exported including the taxes on final products or taxes on inputs used in the manufacture of final product. The intention of the legislation is to ensure that duty is not levied on the export goods or on inputs used in the manufacture of goods which is reflected in Rule 6(6)(v) ibid reproduced hereunder :

"(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i) ……. (ii) ……… (iii) ……. (iv) ……..

cleared for export under bond in terms of provisions of the (v) Central Excise Rules. 2002."

Further, the Hon'ble High Court of Bombay in the case of Repro India Ltd. v. UOI reported in 2009 (235) E.L.T. 614 (Bom.) held as under :-

"Even though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the manufacture of exempted products. Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 the petitioners are entitled to avail Cenvat credit in respect of the inputs used in the manufacture of the final products being exported irrespective of the fact that the final products are otherwise exempt."

(Underline supplied)

So far as the decision cited by the learned AR in the case of Suryamitra Exim Pvt. Ltd. v. CCE, Guntur reported in 2012 (283) E.L.T. 504, the export related to frozen shrimps and frozen fish which are attracting no duty or nil rate of duty and the exception provided in respect of export bond should be read in the context of liability to duty, which is the primary condition for the purpose of allowing Cenvat credit under the Cenvat Credit Rules which is not the issue in the present case. The input services used in the manufacture of final product have suffered service tax and are exported is not in dispute in this case. Therefore, the case law cited by the learned AR is not relevant to the present case. In these circumstances, the learned Commissioner's order is not sustainable and the same is accordingly set aside and the appeal is allowed."

The said view has been reiterated in the case of M/s. GPI Textiles Ltd. (supra).

6.4 From the discussions made above and also following the decisions cited supra, I am of the view that the credit availed on input services is eligible and the contention of the Department that the credit has to be reversed is against the

> *provisions of law. The first issue is therefore found to be in favour of the appellant.*

6. It is further seen that in the impugned Order in Original, the adjudicating authority has placed reliance on the decision of the Commissioner of Central Excise (Appeals), Madurai given in OIA No.146/2014-CE dated 23.12.2014 in the case of M/s. Velayudhaswamy Spinning Mills Ltd, Dindigul. The said OIA is seen set aside and the matter decided in favour of the appellant therein vide Final Order No.41148 & 41149/2024 of a coordinate bench of this Tribunal in the case of M/s. Sri Velayutham Spinning Mills (P) Ltd v Commissioner of GST & Central Excise, Madurai and M/s. Prabhu Spinning Mills (P) Ltd v Commissioner of GST & Central Excise, Madurai.

7. In light of the aforesaid decisions that covers the issue in dispute in this case, this Tribunal, adhering to judicial discipline, subscribes to the same. It is therefore held that the impugned order in appeal, upholding the impugned order in original disallowing the credit and raising consequent demand along with interest and imposing penalty, is untenable and cannot sustain. The impugned order in appeal is hence set aside. The appeal is allowed with consequential relief in law, if any.

(Order pronounced in the open court on 23.01.2025)

(AJAYAN T.V.)
Member (Judicial)

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