

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.52441 of 2016

[Arising out of Order-in-Original No.04-07/Commr/CEX/GWL/2016 dated 13.05.2016 passed by the Commissioner, CGST, Excise & Customs, Gwalior, Indore]

M/s. Tata International Limited

..... Appellant

Plot No. 55, Sector-III,
Pithampur, Distt. Dhar, MP

VERSUS

**Commissioner of Central Excise
Customs and Service Tax, Indore**

..... Respondent

Gwalior, Camp AT Manik Bagh Palace,
Indore (MP)

WITH

Excise Appeal No. 50716 of 2021

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-097-2020-21 dated 30.12.2020 passed by the Commissioner (Appeals) Customs, CGST, Central Excise, Indore, MP]

M/s. Tata International Ltd.

..... Appellant

Leather Complex,
Industrial Area No.1,
A.B. Road, Dewas, MP

VERSUS

**Commissioner of CGST & Central
Excise, Ujjain, MP**

..... Respondent

29, Bharatpuri,
Administrative Area, Ujjain, MP

APPEARANCE:

Shri B.L. Narasimhan and Shri S.C. Vaidyanathan, Advocates for the Appellant

Shri V.K. Jain, Authorised Representative of the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 50078-50079 /2025

DATE OF HEARING: 06.01.2025
DATE OF DECISION: 17.01.2025

BINU TAMTA:

1. The appellant has challenged the order in original no. 04-07/COMMR/CEX/GWL/2016 dated 13.05.2016 and Order-in-Appeal No. IND-EXCUS-000-APP-097-2020-21 dated 30.12.2020 confirming the entire demand of Central Excise Duty along with interest and further penalty equal to the demand of duty confirmed.
2. The facts of the case are that the appellant is engaged in the manufacture of finished leather falling under Chapter 41 of the First Schedule to Central Excise Tariff Act, 1985 ("CETA") having 'NIL' rate of Central Excise duty, and were, therefore cleared without payment of Central Excise duty. The appellant is also engaged in the manufacture of leather articles such as footwear, clothes, etc., falling under Chapter 42 of the CETA, which were cleared upon payment of Central Excise duty.
3. The appellant had cleared 70% of the exempted final product, i.e. finished leather, without payment of duty, while the remaining 30% finished leather was captively consumed by appellant in the manufacture of dutiable final product, i.e. leather articles, cleared upon payment of duty.
4. The appellant had prepared a chemical known as 'season' in the pigment room located within its factory premises. The primary use of 'season' is to provide finishing touch to the finished leather, so that leather is at par with the requirement of customers. For

preparing 'season' appellant mixed binders, pigments, dyes, oil fats, waxes, preservatives, etc. in a plastic drum along with water and hand stirred with the help of wooden stick. The 'season' so prepared is taken to finished leather section where it is sprayed through pump on leather to give desired colour as per the customers requirement and to protect the leather in the long run.

5. Show cause notices dated 2.9.2014, 18.2.2015, 11.9.2015 and 17.2.2016 were issued to the appellant raising the demand of excise duty amounting to Rs. 2,84,99,078/- for the period from August 2009 – September 2015 under section 11A(4)/ Section 11A(1) of the Act, along with interest and penalty. The allegation in the show cause notice was that the activity of preparation of 'season' amounts to manufacture as the product has a shelf life and is marketable and since the appellant is engaged in the manufacture of finished leather which is exempted from duty, the intermediate product, i.e. 'season' prepared by the appellant and captively consumed in the manufacture of finished leather which is an exempted item, is leviable to Central Excise Duty under Notification No. 67/1995-CE dated 16.03.1995. The demand raised under the show cause notice was confirmed by the Commissioner vide Order-in-Original dated 13.05.2016, challenging the said order, the appellant has filed the present appeal no. E/52441/2016.

6. Show cause notice dated 08.04.2019 was issued to the appellant for the subsequent period from April 2017 to June 2017 proposing

demand of excise duty amounting to Rs. 25,64,733/- on similar grounds. The proposed demand was confirmed by the Joint Commissioner vide Order-in-Original dated 14.09.2020 and the appeal filed by the appellant against it was rejected by the Commissioner (Appeals) vide Order-in-Appeal dated 30.12.2020. Hence the appellant has filed the appeal no. E/50716/2021.

7. Heard Shri B.L. Narsimhan and Shri S.C. Vaidhyanathan, learned counsel for the appellant and Shri V.K. Jain, authorized representative for the Department and perused the records of the case.

8. The main issue raised in the present appeal is whether the intermediary product 'season' manufactured and captively used by the appellant is eligible for the benefit of exemption under Notification No. 67/1995. In order to appreciate the issue it is necessary to examine the contents of the said notification which is reproduced below:

"Notification 67/1995-CE:

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (hereinafter referred to as the said Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts-

(i) Capital goods as defined in the Cenvat Credit Rules, 2002 manufactured in the factory and used within the factory of production;
(ii) Goods specific in column (1) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to the manufacture of final products specified in column (2) of the said Table;

From the whole of the duty of excise leviable thereon which is specified in the Schedules to the Central Excise Tariff Act, 1985 (5 of 1986) or

additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act:

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or are chargeable to nil rate of duty, other than those goods which are cleared,-

- (i) To a unit in a Free Trade Zone, or
- (ii) To a hundred per cent Export Oriented Undertaking, or
- (iii) To a unit in an Electronic Hardware Technology Park, or
- (iv) To a unit in a Software Technology park, or
- (v) Under notification No. 108/95-Central Excise, dated 28th August, 1995, or

(vi) By a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the Cenvat Credit Rules, 2001."

9. Shri B.L. Narasimhan, learned counsel for the appellant argued that the intermediary product 'season' is not leviable to Central Excise Duty as they are squarely covered under the exemption notification no. 67/1995. Referring to the provisions of the notification, he submitted that if the specified input is manufactured in the factory and is captively consumed in the manufacture of the specified final product, such input manufactured at the intermediate stage is exempted from payment of Central Excise duty. He further submitted that although the Proviso states that if the specified input is used in the manufacture of exempted goods no exemption is available to such inputs, however, Clause (vi) of the Proviso carves out an exception and makes the Proviso inapplicable in respect of the goods which are cleared by the manufacturer of dutiable and exempted final products after discharging obligation in terms of Rule 6 of the Cenvat Credit Rules 2001 (CCR). In support of his submissions, the learned Counsel has relied on the decision of the Apex Court in the case of **Ambuja Cement Ltd. Vs. CCE, Chandigarh, 2015 (326)**

ELT 13 (SC) and also other line of decisions of the Tribunal in the following decisions:

- **Disha Foods Private Ltd. vs. Commissioner of Central Excise & ST, Hyderabad-II, 2019 (370) ELT 1386 (Tri-Hyd)**
- **Funksool (India) Ltd. vs. Commissioner of Central Excise & Customs, Goa, 2017 (357) ELT 434 (Tri-Mumbai)**
- **Spray King Agro Equipment Pvt. Ltd. and Hitesh P Dudhagra vs. CCE & ST Rajkot, Final order no. A/10415-10416/2022 dated 05.05.2022-CESTAT Ahmedabad.**
- **Shree Extrusion Ltd. vs. Commissioner of Central Excise & ST, Rajkot, Final order no. A/12601/2018 dated 15.11.2018 – CESTAT Ahmedabad**

10. With regard to the eligibility of the exemption notification, as claimed by the learned counsel for the appellant, it is necessary to appreciate as to whether the appellant has discharged the obligation in terms of Rule 6 of the CCR, 2001. We find that the appellant is engaged in the manufacture and clearance of the goods both dutiable and exempted. From the contents of the notification we also find that the intermediary product 'season' prepared in the factory of the appellant is covered under Column (1) of the Table and is used in or in relation to the manufacture of both types of final products covered under Column (2) of the Table of the notification. It is also an undisputed position that the appellant had not availed the Cenvat Credit of duty or tax paid on any inputs or input services or capital goods which were used in the manufacture of both exempted and dutiable goods. The fact that the appellant has not availed the Cenvat Credit shows that they had discharged the obligation as prescribed under Rule 6 of the Rules. The provisions of Rule 6 are quoted herein below:

"RULE 6. [Obligation of a manufacturer or producer of final products and a [provider of output service]]. —

[(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is 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 and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be:

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

Explanation 3. - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].

Explanation 4. - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]

11. In arriving at the conclusion, that the appellant had discharged the obligation in terms of Rule 6 as no Cenvat Credit was availed,

we are supported by the decisions as referred to by the learned Counsel for the appellant. In the case of **Ambuja Cement (Supra)**, the Apex Court considered the issue relating to the interpretation of the exemption notification no. 67/1995 with reference to the dutiability of the intermediary product 'clinker' obtained at the intermediary stage in the production of 'cement', which is exempted from the excise duty under the exemption notification no. 50/2003 dated 10.06.2003. The Apex Court, inter-alia observed as under:

"16. This Rule is not applicable as such in its totality since taking of Cenvat Credit is not in issue in these cases. On the other hand, relevance of this Rule is only to the extent of 'obligation' contained in the said Rule which is to be discharged. A plain reading of clause (vi) of the notification would show that it only contemplates a situation where 'a manufacturer manufactures both dutiable as well as exempt final products.' There may be different final products manufactured by the same manufacturer. The final products may be made out of the same product or out of different products. Clause (vi) does not contemplates that the manufacturer should manufacture only 'one final product' or that if he manufactures only one product that product itself should be both dutiable and exempted. The basis adopted by the CESTAT that the same final product should be partly dutiable and partly exempt, is neither a requirement of clause (vi) nor a requirement of Rule 6."

12. In the case of **Funskool (India) Ltd., (Supra)** the adjudicating authority had denied the exemption under notification no. 67/1995 in respect of packing boxes used captively for manufacture of exempted goods on the ground that the appellant have not discharged the obligation as provided under Rule 6 of the CCR, 2001. In this context, the Tribunal noticed that the appellant therein had not availed the Cenvat Credit in respect of any of the inputs used either in the final product or in the intermediate product, i.e. packing boxes and therefore, concluded that the

obligation in terms of Rule 6(1) stood discharged and they were entitled to the benefit of the exemption notification no. 67/195.

The relevant para of the decision is quoted below:-

"From the above Rule 6 it can be seen that as per sub-rule (1) of Rule 6, the assessee is not required to avail the Cenvat credit in respect of the inputs used in the manufacture of exempted goods. As per the fact of the present case it is undisputed fact that the appellant has not availed the Cenvat credit in respect of any of the inputs used either in the final product or in the intermediate product i.e. packing boxes. Therefore the condition of sub-rule (1) of Rule 6 stands complied with. The finding of the lower authority that since the appellant have not fulfilled Rule 6(2). Therefore they have not discharged the obligation as required in the notification is misleading and absolutely incorrect for the reason that as per clause (vi) of the proviso to Notification, it does prescribe the obligation under Rule 6 only and Rule 6(1) and Rule 6(2) are alternative to each other. Therefore since the appellant have not availed Cenvat credit it is squarely covered under Rule 6(1). Rule 6(2) applies only in such cases where the assessee avails the Cenvat credit and follows the condition of Rule 6(2) such as payment of 8% of the value of the goods or maintaining separate account in respect of dutiable and final product and reversal of proportionate credit etc. which is not applicable in the present case as the appellant have not availed the Cenvat credit at all in respect of any of the inputs, therefore they have discharged the obligation as required under Rule 6(1). We are therefore of the considered view that the appellant have discharged the obligation under Rule 6(1) accordingly they are legally entitled for the exemption Notification No. 67/95-C.E., dated 16-3-1995 in respect of their intermediate product i.e. packing boxes. The impugned order is set aside. The appeals are allowed."

13. Similar observations have been made in **Spray King Agro (Supra)** that exemption under notification is available to the intermediary goods even if the final product is exempted, provided the assessee discharges the obligation prescribed under Rule 6 of the CCR, 2001. In the context, it was observed that the appellant during the impugned period was not registered with the Central Excise Department, hence, has not availed the Cenvat Credit in respect of any of the inputs used either in the final product or in the intermediate product i.e. Brass and therefore, the condition of sub-rule (1) of Rule 6 stands complied with.

14. In view of the various case laws interpreting notification as well as the provisions of Rule 6 of CCR, 2001, it is a settled position that since the appellant herein had not availed the Cenvat Credit, they had discharged the obligation under Rule 6(1) and were therefore, entitled to the benefit of the exemption notification no. 67/1995.

15. Having held the issue on merits on the entitlement of the exemption notification, it is not necessary for us to discuss the issue of manufacture or marketability as alleged in the show cause notice.

16. In view of our discussion above, the impugned order deserves to be set aside and is hereby set aside. The appeals are, accordingly, allowed with consequential benefit, if any.

(Order pronounced in the open court on **17.01.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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