CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

EXCISE APPEAL NO. 50576 OF 2019

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-401-18-19 dated 28.09.2018 passed by the Commissioner of Central Goods & Service Tax, Central Excise Bhawan, Tikrapara–Raipur (Chhattisgarh)]

M/s. Uniworth Ltd. **......... Appellant**
(DTA Unit), Khasra No. 551 & 553, 163/1,
163/2, 168/1 and 168/3, Industrial Estate, Raipur (CG)

vs.

Commissioner of Central Excise and
Service Tax, Raipur **........Respondent**

APPEARANCE:

Mr. Rupesh Kumar, Mr. Jitin Singhal and Mr. Mukul, Advocates for appellant
Mr. S. K. Ray, Authorized Representative for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50889/2026

Date of Hearing/Decision: May 12, 2026

K. ANPAZHAKAN:

The present appeal has been filed against the impugned Order in Appeal No. BHO-EXCUS-002-APP-401-18-19 dated 28.09.2018 wherein the learned Commissioner (Appeals) has upheld the disallowance of Cenvat credit of Rs.1,88,50,754/- availed on inputs and capital goods.

2. The facts of the case are that M/s. Uniworth Limited (hereinafter referred to as the appellant) are engaged in the manufacturing of All Wool Yarn, Poly Wool Yarn, Poly Viscose Yarn, Wool Top, Polyester Top, Wool Nylon Yarn falling under chapter 50, 51 & 55 of the Central Excise Tariff Act, 1985, availing exemption from payment of duty as provided under the Notification No. 30/2004 – CE dated 09.07.2004.

2.1. During the course of audit of accounts of the appellant, it was found that the appellant had availed ineligible Cenvat credit of Rs. 1,94,14,921/- on inputs and capital goods by wrongly interpreting the provisions of the notification no. 30/2004. It was found that the appellant has cleared the finished goods under Notification No. 30/2004-CE dated 09.07.2004 which provides for the exemption from the whole of the duty of excise leviable thereon, subject to specific condition which required non-availment of credit on inputs used in the manufacture of finished goods. As the appellant had cleared the finished goods under Notification No. 30/2004-CE dated 09.07.2004, it was alleged that the appellant was not eligible for the Cenvat credit availed by them on the inputs and capital goods.

2.2. On the basis of the said allegation, a Show Cause Notice dated 02.05.2016 was issued to the appellant proposing to recover the ineligible Cenvat credit of Rs. 1,94,14,921/- [Input – Rs. 43,05,307/- + Capital Goods – Rs. 1,51,09,614/-], availed by the appellant by wrongly interpreting the provisions of Notfn No. 30/2004 – CE dated 09.07.04 and relevant Rules.

2.3. The said notice was adjudicated by Additional Commissioner, who vide O-I-O dated 29.03.2018, confirmed the disallowance of Cenvat credit of

Rs. 1,88,50,754/- along with interest and imposed a penalty of Rs. 94,25,377/-, while dropping the demand of Rs. 5,64,167/-.

2.4. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the O-I-O, vide O-I-A dated 28.09.2018. Aggrieved by the demands confirmed in the O-I-A, the appellant has filed this appeal.

3. The appellant submits that during the relevant period they were engaged in the manufacture and clearance of both dutiable and exempted goods. During the relevant period they have affected three types of clearance of excisable goods which are as under:

(i) DTA clearance availing full exemption under Notfn 30/2004 – CE

(ii) DTA clearance availing concessional exemption under Notfn 29/2004 – CE

(iii) Clearance for Export under rebate in terms of Rule 18 CER 2002.

3.1. It is their submission that the goods cleared for export were dutiable goods and they had executed bonds for export under Rule 18 of the Central excise Rules, 2002; thus, it cannot be alleged that the inputs and capital goods on which Cenvat Credit has been availed by the appellant were used exclusively in the manufacture of 'exempted goods'; that as the inputs and capital goods have been used both in the manufacture of dutiable and exempted goods and hence the Cenvat credit availed by them cannot be denied.

3.2. The appellant submits that they have followed the procedure prescribed in the Circular F. No. 267/01/2006 – Cx. 8 dated 01.07.2007 issued by the Board, which permits availment of Cenvat credit on the inputs and capital goods used in the manufacture of finished goods and simultaneous availment of Notfn 30/2004 – CE & Notfn 29/2004 – CE both dated 09.07.2004. Thus, the appellant contended that denial Cenvat credit availed by them on the inputs and capital goods is legal and proper.

3.3. In support of their contentions, the appellant relied upon the decision of the Tribunal in the case of S. T. Cottex Export (P) Ltd. *vs.* CCE – 2010 SCC OnLine CESTAT 4390, wherein on identical facts and circumstances, this Tribunal has held that Cenvat credit cannot be denied when the assessee is simultaneously availing the benefit of Notfn 29/2004 – CE and Notfn 30/2004 – CE. The said decision has been upheld by the Hon'ble Punjab and Haryana High Court as reported in 2011 SCC OnLine P&H 41. The appellant also relied upon the decision of the Tribunal in the case of Winsome Yarns Ltd. *vs.* CCE – 2015 SCC OnLine CESTAT 3769, wherein it has been held that the Cenvat credit availed on the capital goods cannot be treated as having been used exclusively in the manufacture of exempted goods when the appellant was clearing the goods by availing full duty exemption as well as on payment of duty.

3.4. The appellant further contends that the extended period of limitation cannot be invoked in this case for issuing the SCN, as they have not suppressed any information from the Department; they have been filing the EWR-1 returns regularly and disclosed the Cenvat credit availed details in the returns. Further, the issue involved in this case is of interpretative in nature and hence it is their contention that the demands confirmed by invoking the extended period of limitation is not sustainable.

4. The Ld. Authorized Representative of the Revenue submits that the appellant had intentionally cleared the goods on payment of duty by availing the concessional rate of duty as provided under the Notification 29/2004-CE, even though the full exemption from payment of central excise duty was available to them under the Notification 30/2004-CE. Since the appellant was eligible to avail the full exemption under Notfn 30/2004 – CE, it is argued that the goods manufactured by the appellant are to be treated as "exempted goods" within the meaning of Rule 2(d) of the CCR 2004 as they are wholly exempted by virtue of Notfn 30/2004 – CE; Rule 6(1) CCR 2004 prohibits taking Cenvat credit on inputs and capital goods used exclusively in the manufacture of 'exempted goods'. Accordingly, he submits that the Ld. Commissioner (Appeals) has rightly disallowed the Cenvat credit.

5. Heard both sides and perused the appeal documents presented before us.

6. We find that the appellant has manufactured both exempted goods (cleared at a nil rate of duty under Notification No. 30/2004–CE) and dutiable goods (cleared at a concessional rate under Notification No. 29/2004–CE). The allegation of the Department is that Notification No. 30/2004 fully exempts the goods and hence the appellant should have availed the full exemption. It is therefore alleged that the appellant have intentionally availed the benefit of concessional rate of duty as provided under the Notification 29/2004-CE, with a view to avail the Cenvat credit and subsequently export the goods and claim rebate of the accumulated Cenvat credit. In this regard, we observe that when the appellant is eligible

to avail the benefit of both the notifications, they cannot be compelled to avail either one of the Notifications. It is the liberty of the appellant to avail the notification which is beneficial to them. The Department cannot interfere in the choice of the appellant availing the notification benefit.

6.1. In this regard, we find that Board has issued Circular No. 845/3/2007 EX dated 01.02.2007 wherein it has been categorically held that simultaneous availment Notification Nos. 29/2004 and 30/2004 CE is permissible and the Cenvat credit availed on the inputs and capital goods cannot be denied under such circumstances. For ready reference the clarification issued in the said Circular is reproduced below:

"Circular No. 845/3/2007-CX., dated 1-2-2007

F.No. 267/01/2006-CX.8

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Simultaneous availment of Notification No. 30/2004-C.E. & 29/2004-C.E. both dated 9-7-2004 by the manufacturers of goods falling under Chapter 50 to 63 of the CETA, 1985 - Regarding

Representations were received from trade and industry, as well as field formations seeking clarification on the above referred subject. Notification No. 29/2004-C.E., dated 9-7-2004 permits clearance of goods at concessional rates availing CENVAT Credit wherein a manufacturer can take CENVAT Credit on inputs. Notification No. 30/2004-C.E., dated 9-7-2004 permits a manufacturer to clear the goods at 'Nil' rate of duty without availing CENVAT Credit on inputs. Further, Board's Circular No. 795/28/2004-CX, dated 28-7-2004 [2004 (170) E.L.T. T13] issued by TRU had clarified that the benefit of these two notifications can be availed simultaneously provided the manufacturer maintains separate Books of Account for goods in respect of which benefit of Notification No. 29/2004-C.E., dated 9-7-2004 is availed and similarly, for goods in respect of which benefit of Notification No. 30/2004-C.E., dated 9-7-2004 is availed. However, it was brought to the notice of the Board that in such cases, certain manufacturers did not maintain separate accounts and availed credit on all the inputs. Subsequently, they reversed the credit availed on such inputs utilized for goods cleared under exemption notification No. 30/2004 as per the provisions of Rule 6(3) of the CENVAT Credit Rules, 2004.

> *2. The issue has been examined. It is seen that proviso to notification No. 30/2004-C.E., dated 9-7-2004 states that 'nothing contained in this Notification shall apply to the goods in respect of which the credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004'. Therefore, it is clarified that non-availment of credit on inputs is a precondition for availing exemption under this notification and if manufacturers avail input tax credit, they would be ineligible for exemption under this notification. Reversal of credit on a later date would not suffice to make them eligible for this exemption.*
>
> *3. However, it is seen that textile manufacturers/processors have to use common inputs, which are used in a continuous manner, and it may not be practically possible to segregate and store inputs like dyes and chemicals separately or maintain separate accounts. In such cases, in order to facilitate simultaneous availment of the two notifications, such manufacturers may be advised not to take credit initially and instead take only proportionate input credit on inputs used in the manufacture of finished goods cleared by him on payment of duty. Such proportionate credit should be taken at the end of the month only. At the time of audit of records, or at any other time if the department requires, the assessee should support such credit availment with the relevant records maintained by them showing input quantity used for the goods manufactured and cleared on payment of duty. In case any subsequent verification reveals that such proportionate credit taken is incorrect, the penal provisions as prescribed under the law will be taken against such assessees.*
>
> *4. The field formations may be suitably be informed.*
>
> *5. Receipt of the Circular may be acknowledged.*
>
> *6. Hindi version will follow."*

6.2. We find that the appellant has followed the procedure prescribed in the above said Circular and rightly availed the Cenvat credit of the inputs and capital goods, which are entitled to them. We find that the inputs and capital goods have been utilized for the manufacture of both dutiable and exempted goods and hence we hold that the Cenvat credit availed by the appellant cannot be denied on the ground that the capital goods have been used for the manufacture of exempted goods.

6.3. We find that the above said view has been taken by the Tribunal, New Delhi, in the case of **S. T. Cottex Export (P) Ltd. *vs.* CCE – 2010 SCC OnLine CESTAT 4390=2010 (261) E.L.T. 807 (Tri. – Del)**, wherein on identical facts and circumstances, this Tribunal has held that Cenvat credit cannot be denied when the assessee is simultaneously availing the benefit of Notfn 29/2004 – CE and Notfn 30/2004 – CE. The relevant part of the said decision is reproduced below for ready reference:

> ***"****4. I have carefully considered the submissions from both sides and perused the records. Capital goods, in question, had been received during January, 2005 to March, 2005 and at that time the goods manufactured by using those capital goods - cotton yarn had been cleared by a duty exemption under Notification No. 30/2004-C.E. However, from June, 2005 onward the appellants started availing benefit of Notification No. 29/04-C.E. in respect of their clearances for export where there is optional rate of duty of 4% and there is no dispute about the fact that Notification No. 29/04-C.E. and 30/04-C.E. were being availed during the same period simultaneously. In view of this position, it cannot be said that the capital goods in question had been used exclusively for the manufacture of fully exempted finished products. Under sub-rule (4) of Rule 6 of Cenvat Credit Rules, 2004, capital goods Cenvat credit is inadmissible only in respect of those capital goods which are exclusively used in the manufacture of exempted goods. But it is not so in this case. In the case of Surya Roshni Ltd. (supra) relied upon by the Commissioner (Appeals), the finished products at the time of receipt of capital goods were fully and unconditionally exempt from duty while it is not so in this case as in this case while Notification No. 30/04-C.E. provides full duty exemption subject to the condition that no input duty credit has been taken, Notification No. 29/04-C.E. issued on the same date provides optional rate of duty of 4% adv. without any condition. Therefore, the ratio of Tribunal's judgment in the case of Surya Roshni Ltd. (supra) is not applicable to the facts of this case. In view of the above discussion, impugned order is not sustainable and the same is set aside. Appeal is allowed."*

6.4. The said decision has been also upheld by the Hon'ble Punjab and Haryana High Court as reported in **2011 SCC OnLine P&H 41=2011 (268) E.L.T. 318 (P & H).** The observation of the Hon'ble High Court in the aforesaid decision is as under: -

> *"6. In view of finding of the Tribunal that the assessee availed benefit of notification under which 4% duty was payable, it cannot be held that assessee used the capital goods in manufacture of exempted goods in which case the assessee*

could not claim the benefit of cenvat credit under Rule 6(4). No substantial question of law arises."

6.5. We find that the same view has been taken by the Tribunal in the case of **Winsome Yarns Ltd. vs. CCE – 2015 SCC OnLine CESTAT 3769=2015 (318) E.L.T. 261 (Tri. – Del.),** wherein it has been held that the Cenvat credit availed on the capital goods cannot be treated as having been used exclusively in the manufacture of exempted goods when the appellant was clearing the goods by availing full duty exemption as well as on payment of duty. The relevant part of the said decision is reproduced below for ready reference:

"6. There is no dispute that during period of dispute, the clearances for domestic consumption had been made by the appellant at nil rate of duty by availing the Notification No. 30/2004-C.E. and clearances for export had been made on payment of 4% duty under Notification No. 29/2004-C.E. There is also no dispute that during the period of dispute no input duty credit had been availed and only capital goods Cenvat credit had been availed in respect of which there is no prohibition in Notification No. 30/2004-C.E. Thus the appellant even in respect of clearances made under Notification No. 29/2004-C.E. also, had not availed input duty credit, though in respect of these clearances, they could have availed the input duty Cenvat credit. The point of dispute is as to when the appellants have not availed input duty credit, whether they have option to avail the Notification No. 29/2004-C.E. where the rate of duty is 4%. The Department's contention is that once the appellant have not availed any input duty credit and they have become eligible for Notification No. 30/2004-C.E., they have no option but to avail of the exemption Notification No. 30/2004-C.E. only and they cannot opt from Notification No. 29/2004-C.E. and pay 4% the duty and in such a situation if any duty payment has been made, it would have to be treated as deposit and the clearances would have to be treated as clearances of fully exempted goods made under Notification No. 30/2004-C.E. and accordingly the appellant would not be eligible for capital goods Cenvat credit. This contention of the Department is totally incorrect, as Exemption Notification No. 29/2004-C.E. is an unconditional exemption which prescribes a rate of duty of 4% ad valorem. There is no condition in this notification that for availing of this exemption prescribing concessional rate of duty of 4% adv., input duty Cenvat credit must be availed. The condition of non-availment of input duty Cenvat credit is for nil duty under Notification No. 30/2004-C.E. But this does not mean that an assessee not

> *availing input duty credit cannot avail the exemption under Notification No. 29/2004-C.E., as this is an unconditional Notification. When an assessee does not avail of input duty credit, he has option to pay 4% duty under Notification No. 29/2004-C.E. and also the option to clear his goods at nil rate of duty under Notification No. 30/2004-C.E. and when two exemption Notifications are available to an assessee, he can always opt for the Notification which is most beneficial for him and in this regard the Department cannot force the assessee to avail a particular exemption Notification. Looked at from this point of view, the Department's stand is incorrect."*

6.6. We find that the ratio of the decisions cited supra are squarely applicable to the facts and circumstances of the present case . Accordingly, we hold that the appellant is eligible to avail the Cenvat credit on the inputs and capital goods in this case.

7. Regarding the invocation of extended period of limitation to deny the Cenvat credit availed by the appellant, we find that the SCN has been issued on the allegation that the appellant has availed the Cenvat credit on the inputs and capital goods by wrongly interpreting the provisions of the Notification no. 30/2004. Thus, we find that the Notice itself holds the view that the issue involved in the present case is of interpretative in nature. We observe that suppression of fact with an intention to evade the payment of tax cannot be alleged on an issue which is interpretative in nature. Further, it is on record that the Notice has been issued on the basis of the observations made by the audit on the records of the appellant. We find that the appellant has been filing returns regularly and they have disclosed the availment of Cenvat credit on the inputs and capital goods in the ER-1 returns filed by them.

7.1. Further, we find that the appellant has been claiming the rebate of the accumulated Cenvat credit after the export. From the rebate Sanction

Orders, we find that the Cenvat credit availed by the appellant have been scrutinized by the Range Officer before sanction the rebate claims. For ready reference, the findings in one of the rebate sanction order in 49/Rebate/AC/RD/2011 dated 16.08.2011, is reproduced below:

> *I have gone through the documents submitted by the party viz. original and duplicate copies of ARE-1 No. 013/UL (DTA Unit)/2011-12 dated 30.05.2011 duly certified by the Customs Officer regarding shipment of the export goods, copy of Export Invoice No. 5D11014 dated 30.05.2011, triplicate copy of ARE-1 forwarded by the Jurisdictional Range Officer, self-attested copy of Shipping Bill No. 3905429 dated 31.05.2011 and the Bill of Lading No. NYKS3557063650 dated 11.06.2011, self-authenticated copy of daily Stock Account showing removal of goods for export and duty payment particulars i.e. RG 23A Pt. II and Superintendent, Central Excise, Range – IV, Raipur's verification report submitted vide his letter C. No. GL-2/9/UL (DTA)/Refund/Sec. F/10/275 dated 18.07.2011. The jurisdictional Range officer in his said verification report has reported that the duty payment particulars and the clearance of goods have been verified from the cenvat account and daily stock account and found in order. He also submitted that arrear of Rs. 6.01.424/- (duty) and Rs. 6,01,424/- (penalty) is pending for recovery against the party in respect of OiA No. 230/RPR – I/2010 dated 13.08.2010. However, the party has filed appeal before the CESTAT against the said Order-In-Appeal dated 13.08.2010 and stay has been granted to them vide Stay Order No. 222/2011-SM(BR) dated 13.05.2011. The party vide their letter no. UL-DTA/CEX/2011-12 dated 15.07.2011 has submitted the said stay order issued by the CESTAT, New Delhi. In this view, recovery of the said amount cannot be adjusted in the instant refund claim.*

7.2. From the above, we find that no objection has been raised by the rebate sanctioning authority regarding the eligibility of the Cenvat credit availed by the appellant. We also find that the rebate Sanction Orders have been accepted by the Department. Since no appeals have been filed against the said orders, they have attained finality. Thus, we hold that the appellant has not suppressed any information from the Department regarding availment of Cenvat credit on the inputs and capital goods. Accordingly, we hold that the invocation of extended period of limitation to deny the Cenvat credit availed by the appellant is legally not sustainable.

8. In view of the above findings, we hold that the demands confirmed in the impugned order are not sustainable on merits as well as on limitation. As the disallowance of Cenvat credit in this case is not sustained, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

9. In the result, we set aside the impugned order on merits as well as on limitation and allow the appeal filed by the appellant with consequential relief, if any, as per law.

[Order pronounced in the open court]

(JUSTICE DILIP GUPTA)
HON'BLE PRESIDENT

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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