IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/416/2012-EX [SM]

[Arising out of Order-in-Appeal No. 145/RPR-I/2011 dated 26.09.2011, passed by the Commissioner of Central Excise, Raipur]

CCE Raipur **....Appellant**

Vs.

Lafarge India pvt Ltd **....Respondent**

Appearance:
Sh. M.R. Sharma, AR for the Appellant
Sh. Saurabh Suman Sinha, Advocate for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.01.2017

FINAL ORDER NO. 50860 /2017-CU[SM]

Per V. Padmanabhan

The present appeal has been filed by Revenue challenging the Order dated 26.09.2011 by the Commissioner (Appeals) Raipur. The respondent is engaged in the manufacture of "Cement" falling under Chapter 25 of the Central Excise Tariff Act, 1975. The dispute has arisen on account of clearances of cement without payment of duty to M/s. Jindal Stainless Steel Ltd, who is a SEZ developer. The Department was of the view that clearances made to SEZ developers without payment of duty is in the nature of clearance of exempted goods which will invoke the mischief of Rule 6 of the Cenvat Credit Rule, 2004. Demand was raised to the extent of Rs

30,36,120/- as an amount payable at the rate of 10% of the value of exempted clearance to SEZ developers along with interest and penalties. In the impugned order, Commissioner (Appeals) held that there is no requirement of the respondent paying an amount at the rate of 10% of the value of exempted goods under Rule 6(6)(i) of the Cenvat credit Rules, Since clearance to SEZ developers are in the nature of export. Further, he dropped the demand on the ground of time bar also in as much as the Show Cause Notice in this case has not been issued within the normal period of limitation. This is not a case of suppression of facts and hence he held that the extended period of limitation will not be available for demand of the said amount.

2. With the above background, Heard Shri M.R. Sharma, ld. AR for the appellant as well as Shri Saurabh Suman Sinha, ld. Advocate for the respondent.

3. Ld. DR submitted that Rule 6(6) has been amended by Notification No. 50/2008-CE(NT) dated 31.12.2008 to extent the benefit of non-reversal under Rule 6(3), in respect of clearances made to SEZ developers. In the present case, since the clearances were made to SEZ developers prior to 31.12.2008, he submitted that the demand should be sustained.

4. The ld. Counsel on the other hand, submitted that it has been held time and again that the amendment made with effect from

31.12.2008 is to be considered as retrospective. He also placed reliance on **Commissioner Vs. Fosroc Chemicals (India Pvt. Ltd.)2015 (318) ELT 240 [Para 12-14, ELT]**, **Surya Roshni Ltd Vs. CCE, Rohtak 2012 (285) ELT 422 (All)[Para 18-ELT]** wherein this view has been upheld.

5. I find that the issue is no longer *res Integra.* In the case of **Fosroc Chemicals the Hon'ble High Court of Karnataka** has formulated the following question for a decision:

"*Whether the amendment to the Cenvat Credit Rules 2004, by substituting clause(i) of sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004 by way of notification No. 50/2008-C.E.(N.T.), dated 31-12-2008 is prospective in operation or retrospective".*

The Hon'ble High Court went on to decide the issue against Revenue. The relevant findings are as follows:

"13. *The Parliament has enacted the Special Economic Zones Act, 2005(The SEZ Act for short) to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto. Section 53 of the Act declares that a special economic zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. The word "export" has been defined under Act at Section 2(m). According to the definition of the word export, vide Section 2(m)(ii) "export" means supplying goods or providing services, from the Domestic Tariff Area to a Unit or Developer. Such exports were exempted from duty of Central Excise under Section 26 of the SEZ Act, 2005 and consequently application of Cenvat Credit Rules. Section 151 of the Special Economic Zones Act, 2005, overrides the provision of all other laws for the time being in force, notwithstanding anything inconsistent therein with the provision of the Special Economic Zones Act, 2005. This section therefore overreaches and eclipses the provisions of any other law containing provisions contrary to the SEZ Act, 2005. Though the definition of the word "export" in the SEZ Act, in Sec. 2(m) included supply of goods to a "Unit" or "Developer", in clause (i) of sub-rule (6) of Rule 6 of the Cenvat Credit Rules, 2004 the word "Developer" was conspicuously missing and only "unit" was included before the 2008 amendment. It is in that context the aforesaid amendment by Notification No. 50/2008 C.E. (N.T), dated 31-12-2008 was brought in, to clarify the doubt. As the said amendment is clarificatory in nature, that is the reason why it was brought by way of "substitution". The effect of the said "substitution" is that the Cenvat Rules 2004 are to be read and construed as if the altered words had been written into the Rules of 2004 with* *pen and ink and the words "to a developer of the SEZ for their authorized operation" was there from the inception. This is the understanding of the Government as is also clear from the circular issued by the C.B.E.&C. bearing No. 29/2006-Cus., dated 27-12-2006 wherein clause 4 reads as under :-*

> *"4. In the light of the aforesaid provisions, with effect from 14-3-2006, Chapter XA of the Customs Act, 1962, the SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003, and the exemption Notification No. 58/2003-C.E., dated 22-7-2003 regarding the supply of goods to SEZ units & SEZ developers have become redundant. Consequently the supplies from DTA to a SEZ unit, or to SEZ developers for their authorized operations inside a SEZ notified under sub-section (1) of Section 4 of the Act, may be treated as in the nature of exports."*
>
> ***14.** Therefore, it is clear, the said amendment has to be construed as retrospective in nature and the benefit of Rule 6(6)(i) as amended in 2008 has to be extended to the goods cleared to a "developer" of a Special Economic Zone for their authorized operations. Therefore, we do not see any merit in these appeals.*
>
> ***15.** The substantial question of law is answered in favour of the assessees and against the Revenue.*
>
> ***16.** Accordingly, the appeals are dismissed."*

6. In view of the categorical findings of the Hon'ble Karnataka High Court, which has been followed by the Tribunal in many decisions, I find no reason to interfere with the impugned order. Accordingly, Revenue's appeal is dismissed.

[Dictated and Pronounced in the Open Court]

V. Padmanabhan
(Member Technical)

RS