CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Excise Appeal No. E/52052/2014-EX [SM]

[Arising out of Order-in-Appeal No. 225(VC) CE/JPR-I/2013 dated 16.01.2014 passed by the Commissioner (Appeals), Central Excise, Commissionerate, Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Rajasthan Antibiotics Ltd. ...Appellant

Vs.

C.C.E. & S.T. Jaipur-I …Respondent

Appearance:
Mr. Bipin Garg, (Advocate) for the Appellant
Mr. Dharam Singh, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.20.01.2017
Date of Decision.31.03.2017

Final Order No. 52662 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 16.01.2014 passed by the Commissioner of Customs and Central Excise (Appeals-I), Jaipur.

2. Brief facts of the case are that the appellant is engaged in manufacture of Antibiotics, falling under Chapter 29 of the Central Excise Tariff Act, 1985. The said goods attract payment of Central Excise Duty. The appellant also manufactures Hydrocortisone and Quinine Sulphate, which are exempted from payment of duty under Notification No. 04/2006-C.E. dated 23.03.2006. During the course of audit of records in the factory premises of the appellant, the central excise officers observed that the appellant had not paid the amount of 5% / 10% in terms of Rule 6 (3)(i) of the cenvat credit rules, 2004. Accordingly, after issuance of show cause notice, the matter was adjudicated against the appellant in confirming the demand of Rs. 20,79,378/- and imposing equal amount of penalty. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 16.1.2014 has upheld confirmation of the adjuged demand. Hence, the present appeal is before the Tribunal.

3. The ld. Advocate appearing for the appellant submitted that on pointing out the fact regarding taking of cenvat credit on the exempted goods by the audit wing, the appellant had reversed the cenvat credit taken

by it on inputs proportionately. He further submitted that the packing material i.e. Aluminum container and Thermocol Sheet received under separate invoices bear the name of the exempted goods and the credit so taken on those packing material was reversed as per the invoice issued by the supplier. With regard to the input i.e. Furnace Oil, the submissions of ld. Advocate are that proportionate cenvat credit of Rs. 8,536/- was reversed by the appellant as per the records maintain by it. He also submitted that upon verification of the books of accounts, the Chartered Accountant has submitted certified that such reversal is in proportion with the credit taken on inputs used in the manufacture of exempted goods.

4. Further, the ld. Advocate has relied on the decision of this Tribunal in the case of IPCA Laboratories Ltd. Vs. C.C.E. Indore, Final Order No. A/51560/2015-EX-(DB) dated 06.05.2015 to submit that the appellant is not required to pay 5% /10% of the amount value of exempted services.

5. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the

impugned order and further submitted that since the appellant had not maintained separate records in respect of dutiable and exempted goods manufactured, it is required to pay the amount as provided in Rule 6(3) of the Cenvat Credit Rules, 2004.

6. Heard both sides and perused the records.

7. The period of dispute involved in this case is from March 2006 to October 2010. The fact is not under dispute that the appellant had used the common inputs namely, Aluminum container and Thermocol Sheet as packing material and Furnace Oil for manufacturer of both dutiable and exempted final products and that upon pointing out the fact of taking such credit by the auditing wing of Central Excise Department, the appellant had reversed the proportionate cenvat credit taken of such common inputs. However, the contention of the Department is that the appellant should not have taken cenvat credit on those inputs and since has taken credit, should have maintained separate records and in absence of non maintenance of records, the appellant is liable to pay amount of 5%/ 10% of the value of exempted goods removed from factory.

8. Rule 6 of the Cenvat Credit Rules, 2004 was amended vide Section 73 of the Finance Act, 2010 (With retrospective effect from 10.09. 2004 to 31.03.2008), providing for payment of amount equivalent cenvat credit attributable to the goods or input services used in, or in relation to the manufacture of exempted goods, before or after the clearance of such goods. In this case, since the appellant had reversed proportionate cenvat credit attributable to the common inputs, as per the said amended provisions of Rule 6 *ibid*, such reversal is in conformity with the amended statutory provisions. Thus, reversal of proportionate credit from March 2006 to March 2008 is in conformity with the provisions of the amended Rule 6 *ibid*. The Tribunal in the case of IPCA laboratories Ltd. (supra) while analyzing the provisions of retrospective amendment of Rule 6 *ibid,* has held that the appellant was entitled to reverse the proportionate credit attributable to the quantum of inputs services used in or in relation to manufacture of exempted final product and by foregoing this credit, they have compiled with this obligation.

9. The position of reversal of cenvat credit w.e.f 01.04.2008 is contained in sub-rule 3(3A)(b) *ibid*,

providing for payment of amount equivalent to cenvat credit attributable to inputs used in or in relation manufacture of exempted goods on monthly basis. On perusal of statutory provisions effective from 01.04.2008, it reveals that the manufacturer can reverse the cenvat credit on inputs used in manufacture of exempted goods on monthly basis. In the present case, since the appellant had reversed proportionate cenvat credit attributable to common inputs used for manufacture of dutiable as well as exempted goods, the same is in conformity with the above amended provisions of Rule 6 (3A)(b) *ibid*. However, since the appellant has not determined and paid the cenvat credit on inputs used for manufacturer of exempted goods on monthly basis, in my opinion, it is liable to pay interest for late reversal on cenvat credit.

10. The judgment of Hon'ble Bombay High Court in the case of CCE, Thane-I Vs. Nicholas Piramal India Ltd. [2009(244)E.L.T 321 (Bom.)] relied on by the ld. AR for Revenue is not applicable to the fact of the present case inasmuch as the said judgment was delivered prior to the amendment of sub-rule (3) of Rule 6 *ibid*.

11. In view of the foregoing discussions, the impugned order is set aside to the extent, it ordered payment of amount in terms of Rule 6(3)(b) *ibid* and imposition of penalty. However, the appellant is liable to pay interest at the prescribed rate on the amounts paid belatedly on proportionate basis towards inputs used in exempted goods. The appeal is disposed of in above terms.

(Pronounced in the open court on 31.03.2017)

(S. K. Mohanty)
Member (Judicial)

Sakshi