CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 3874 of 2010

(Arising out of Order-in-Original No. 19/Commr/CEX/IND/2010 dated 30.08.2010 passed by the Commissioner of Central Excise, Indore**)**

DATE OF HEARING : 19.09.2017
DATE OF DECISION : 19.09.2017

CCE, Indore .... Appellant
(Rep by Sh. R.K. Mishra, DR)

VERSUS

M/s IPCA Laboratories Ltd. .... Respondents
(Rep. by Sh Hemant Bajaj, Adv.)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 56755/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the Department against the Order-in-Original No.19/Commr/CEX/IND/2010 dated 30.08.2010 passed by the Commissioner of Central Excise, Indore. The period in dispute is March 2005 to March 2008.

2. The brief facts of the case are that, during the period under consideration, the assessee-Respondents were engaged in

the manufacture of Bulk Drugs & P.P. Medicines falling under First Schedule to the Central Excise Tariff Act, 1985. They were availing proportionate credit on various inputs and input services used in the manufacture of dutiable products. The Department issued a show cause notice classifying the goods under Chapter Heading 2939 2090. But by the impugned order, the adjudicating authority has given relief to the assessee-Respondents by classifying the same under 2942 0090 as claimed by the assessee-Respondents. Being aggrieved, the Revenue has filed the present appeal.

3. With this background, we have heard Shri R.K. Mishra, learned DR for the Revenue and Shri Hemant Bajaj, learned counsel for the assessee-Respondents.

4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up before this Tribunal in the assessee-Respondents' own case for the earlier period [**IPCA Laboratories Ltd. vs CCE, Indore,** 2015-TIOL-1097-CESTAT-DEL], wherein it was observed that :

> **"6. The appellant used 6 common input services which are used in or in relation to manufacture of dutiable final product as well as exempted final product. During the period of dispute, the total Cenvat credit attributable to these common input service is Rs. 15,52,417/-. However, there is no dispute that during previous financial year, the proportion of the turnover of exempted final product was 70% and on this basis during the period of dispute, the appellant have foregone 70% of the Cenvat credit in respect of these six common input services and**

accordingly, have availed Cenvat credit of Rs. 4,65,725/- attributable to the input services used in or in relation to the manufacture of the dutiable final product and have foregone the Cenvat credit of Rs. 10,86,692/- in respect of the services used for exempted final product. The point of dispute is as to whether just because the appellant did not maintain separate account and inventory of the input services meant for dutiable and exempted final product as per the provision of Rule 6(2), the provisions of Rule 6(3)(b) providing for payment of an amount equal to 10% of sale value of the exempted final product would be applicable.

6.1. In our view w.e.f. 1-3-2008 Rule 6(3) had been amended to give an additional option to a manufacturer manufacturing dutiable as well as exempting final product by using common Cenvat credit availed input/input services and this additional option was to reverse the proportionate Cenvat credit attributable to input/input services used in or in relation to manufacture of exempted final product. The proportionate amount of Cenvat credit attributable to the input/input services used in or in relation to manufacture of exempted final product was to be calculated as per the formula prescribed in Rule 6(3A). By Finance Act, 2010, the above provisions were made retrospectively applicable. Hon'ble Gujarat High Court in case of Sh. Rama Multitech Ltd. v. UOI reported in 2011 (267) E.L.T. 153 (Guj.) has held that even if separate account have not been maintained, in view of retrospective amendment by Finance Act, 2010, a manufacturer using common inputs in or in relation to manufacture of dutiable as well as exempted final product would be entitled to reverse the proportionate Cenvat credit. In view of this position, during the period of dispute the option of paying an amount equal to 10% of the sale value of the exempted goods cannot be forced upon the appellant and the appellant would be entitled to reverse the Cenvat credit attributable to the inputs/input services used in or in relation to the manufacture of the exempted final product. According to the appellant, they have not taken and have foregone the Cenvat credit attributable to the quantum of input services, attributable the turnover of exempted final product and this fact is not disputed. The Commissioner does not even dispute the quantum of the credit foregone. Once, the appellant have foregone the proportionate Cenvat credit in respect of input services used in or in relation of the manufacture of exempted final product, they have to be treated as complied with the provisions of sub-rule (3) of Rule 6 and hence, there cannot be any demand of amount under Rule 6(3)(b). The judgment of Hon'ble Bombay High Court in case of CCE, Thane-I v. Nicholas Piramal (India) Ltd. (supra) is of the period when the retrospective

amendment to Rule 6(3) by Finance Act, 2010 had not been made and hence, this judgment of Hon'ble High Court is not applicable to the facts of this case. In view of the retrospective amendment introduced by Finance Act, 2010, the appellant were entitled to reverse the proportionate Cenvat credit attributable to the quantum of input services used in or in relation to manufacture of exempted final product and by foregoing this credit, they have complied with this obligation. In view of this the impugned order is not sustainable. The same is set aside. The appeal is allowed."

5. By following our earlier order (supra), we find no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

6. The next grievance of the Department is pertaining to the denial of the Cenvat Credit of Rs. 2,22,664/- on the ground that Hydroxy Chloroquine Sulphate (HCQS) [medicine] is not dutiable. The assessee-Respondents are manufacturing this product and paying the duty under the Central Excise Act, 1944. When it is so, then the assessee-Respondents are entitled to take the Cenvat Credit which has been denied in the show cause notice, but the same was allowed by the adjudicating authority.

7. By considering the totality of the facts and circumstances of the case, we are of the view that when the duty has been accepted on the final product by the Department, then the assessee-Respondents are entitled for the Cenvat Credit which was rightly allowed by the adjudicating authority.

8. Hence, we find no reason to interfere with the impugned order on this ground also and the same is hereby sustained along with the reasons mentioned therein.

9. In the result, the appeal filed by the Department is dismissed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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