CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 01.03.2018

Appeal No. E/50200/2017- [DB]
[Arising out of the Order-in-Original No. ALW-EXCUS-O-I-O-COM-57-16-17 Dated 03/11/2016 passed by the Commissioner of Central Excise and Service Tax-Alwar]

VARUN BEVERAGES LIMITED … Appellant

Vs.

C.G.ST C & C.E-ALWAR …Respondent

Appearance:
Present Shri Bimal Jain, Advocate for the appellant
Present Shri R.K. Mishra Jain, AR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 51023/2018

Per B.Ravichandran

1. The appeal is against order 03/11/2016 of Commissioner of Central Excise, Alwar. The appellant is engaged in the manufacture of fruit juice, mineral water etc liable to Central Excise duty. In respect of fruit juice based drinks, the appellant availed concessional duty of one percent in terms of Notification No. 1/2011 CE dated 01/03/2011 as mentioned. One of the conditions for availing such concession is that the assessee shall not avail any credit of duty/ tax availed on inputs/ input servicers. Alleging that the appellant did not fulfill this condition proceedings were initiated against them to demand and recover differential duty on such product denying the concession under the said notification.

2. The Ld. Counsel appearing for the appellant submitted that they did avail concessional under Notification No. 01/2011 for the period March, 2011 to March, 2013. During the month of March, 2011, the appellant

did not take any credit attributable to the goods on which such concession duty was availed. In other words they maintained separate accounts of inputs and input services and hence no credit was availed in respect of the impugned goods for availing concession. For the period April, 2011 to March, 2013 for inputs they maintained separate records. In respect of input services they have determined proportionate credit attributable to the impugned final products and reverse the same. This they have intimated to the department periodically. On this basis referring to provisions of Sub-Rule (3D) of Rule 6 of Cenvat Credit Rules, the Ld. Counsel submitted that such payment of an amount under Sub-Rule 3 shall be deemed to be non-availment of Cenvat Credit and the exemption wherever available on such non-availment shall be eligible to the appellant. On limitation also the Ld. Counsel submitted that they have been intimating the department on their action regularly and there could be no allegation justifying extended period.

3. We have heard both the sides and perused the appeal records. The only dispute in the present case is with reference to entitlement of the appellant for concession under Notification No. 01/2011 CE. The said Notification is conditional to the effect that no credit of duty on inputs or Service Tax on input services shall be availed by the assessee. For the month of March, 2011 the appellant categorically ascertained that they have maintained separate records both for inputs and input services and as such have not violated the said condition of the notification. We hold in that case there is no basis for denial for exemption. For the period April, 2011 to March, 2013 for inputs the appellants have maintained separate records. For input services

following the provision of Rule (3A) of CCR, 2004, they have reversed proportionate credit on such input services attributable to the impugned final products. In this connection, we note that Sub-Rule (3D) of Rule 6 stipulates as under:-

> *"(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken."*

4. The facts as asserted by the appellant are covered by the above provision and as such denial of exemption by the Original Authority is not justified. We have also perused the impugned order regarding the reason for denial of exemption. The Original Authority only discussed the condition for availing the exemption under Notification No. 01/2011 without adverting to the statutory provision of Sub-Rule (3D) of Rule 6 which was strongly contended by the appellant. No analysis of such defense has been made by the Original Authority. As such we find that the Original Authority fell in error in not considering the legal provisions as contended by the appellant. The impugned order, as it stands is not sustainable.

5. The correctness of the quantification to apply the provisions of Sub-Rule (3D) of CCR, 2004 can be made by the jurisdictional authority for satisfying the assertions made by the appellant. With such liberty the impugned order is set aside and the appeal is allowed.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra) **President**	**(B. Ravichandran)** **Member (Technical)**

Rekha