

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

**Excise Appeal No.E/52706/2018-EX [SM]**

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-166-2018-19 dated 15.05.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax, Central Excise & Customs Duty (Appeals), Raipur]

**M/s. Vaswani Industries Ltd. ...Appellant**

**Vs.**

**CCE, Raipur**

**... Respondent**

Present for the Appellant : Ms.Shreya Dehiya, Advocates  
Present for the Respondent: Mr.P.R. Gupta, D.R.

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing: 12/11/2018**

**Pronounced on : 07.12.2018**

**Final ORDER NO. 53370 /2018**

**PER: RACHNA GUPTA**

The appellant herein is aggrieved of the order of Commissioner (Appeals) bearing No.3241 dated 15.05.2018. The appellants are the manufacturers of sponge iron, billets etc. and are availing Cenvat Credit of duty paid on the inputs, capital goods and input services and are utilising such cenvat credits towards payment of duty leviable on their finished excisable goods. Department during the scrutiny of record has observed that during the period of April 2014 to March, 2015 the appellant have availed the Cenvat credit of duty paid on

the input and input services like service tax paid on GTA Coal, cargo handling service on coal, security service, repair and maintenance service and manpower recruitment services etc. and also on input such as coal etc. used for generation of electricity on which for the time being no excise duty was chargeable. It was also observed that the electricity so generated was sold outside the factory gate of the appellant to the customers for a monetary consideration besides being used captively in the manufacture of excisable goods. It was alleged that the appellant have availed cenvat credit on inputs/input service relevant to both in dutiable and exempted excisable goods, which have been sold to outside parties for monetary consideration without maintaining separate accounts of the cenvat credit/service tax credit taken for the manufacture of dutiable, as well as, exempted goods as prescribed under Rule 6 (2) of the Cenvat Credit Rules, 2004 (CCR, 2004). Nor they had paid an amount equal to 6% of value of the exempted goods cleared/ sold during the period from April 2014 to March, 2015 as prescribed under Rule 6(3) (i) of CCR, 2004. Resultantly, a show cause notice No.6517 dated 24.06.2016 was served upon the appellants proposing recovery of Rs.14,12,980/- alongwith the interest in terms of Rule 6 (3A) of CCR, 2004 read with Rule 2014 of CCR, 2004 and Section 11A (e) of Central Excise Act, 1944 alongwith the proportionate penalty. The said demand was confirmed vide order of Assistant Commissioner bearing No.55 dated 28.11.2017. Being aggrieved, an appeal before Commissioner

(Appeals) was filed who vide the order under challenge has upheld the said decision. Resultantly, the appellant is before this Tribunal.

2. I have heard Mrs. Shreya Dahiya, Id. Advocate for the Appellant and Shri. P R. Gupta, Id. D.R. for the Department.

3. It is submitted on behalf of the appellant that while submitting on behalf of the appellant, Id. Counsel has impressed upon the definitions of excisable goods, exempted services/ goods, capital goods and the inputs as given under Central Excise Act and CCR, 2004 respectively. She has also impressed upon that since they were not maintaining the separate accounts for receipt, consumption and inventory of inputs, they were entitled for exercising the options as mentioned in Rule 6 (3) of CCR, 2004. They have opted Rule 3A (b) (iii) of CCR, 2004 and have accordingly, discharged their liability correctly. The findings under challenge are alleged as erroneous and are prayed to be set aside. Id. Counsel has relied upon **CCE, Raipur vs. Aarti Sponge & Power Ltd. reported in 2017 (350) ELT 268 (Tri.-Delhi)** to impress upon that when common inputs are used in manufacture of dutiable as well as exempted products, any by-product/ waste arising during such manufacture, the same cannot be subjected to levy or cannot required to be accounted in terms of Rule 6 (2) or 6 (3) (b) of CCR, 2004. Above all, the show cause notice is alleged to be barred by period of limitation. Appeal is accordingly, prayed to be allowed.

4. Ld. DR per-contra has impressed upon that appellant did not maintain the separate accounts for the cenvat credit taken for the manufacture of dutiable as well as exempted goods. Though the appellant had submitted about the option vide letter dated 01.04.2014 in the requisite format in terms of Rule 6 (3A) of CCR but still appellant was required to make monthly provisional payment of the amount equal to cenvat credit reversible against input and input services used/provision towards electricity sold by them for a monetary consideration month by month up to March, 2015. The order under challenge has been fully justified. The appeal is accordingly prayed to be dismissed.

5. I observe and opine:

The admitted fact of the case is that the appellants have exercised the option of applicability of Rule 6 (3A) of CCR, 2004 and due intimation of the same was given to the Department vide a letter dated 01.04.2014. This option was exercised because the appellant admittedly was not maintaining a separate accounts for the receipt, consumption and inventory of inputs used:

- (1) in or in relation to the manufacture of exempted goods
- (2) in or in relation to manufacture of dutiable final products excluding exempted services..
- (3) for the provision of exempted services

(4) for the provision of output services excluding exempted services in accordance of Rule 6 (2) (a) of CCR, 2004.

Hence, the appellant was entitled to exercise option as mentioned in Rule 6 (3) of CCR. One of the option thereof is 6 (3) (ii) that is to pay an amount as determined under Sub-rule (3A). Sub-rule (3A) reads as follows:-

*(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-*

*(a)*

*(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-*

*(i) name, address and registration No. of the manufacturer of goods or provider of output service;*

*(ii) date from which the option under this clause is exercised or proposed to be exercised;*

*(iii) description of dutiable goods or taxable services;*

*(iv) description of exempted goods or exempted services;*

*(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;*

*(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-*

*(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;*

*(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the*

*total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;*

*(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;*

6. From the record of the appeal, it is apparent that sub-clause (a) of sub-rule (3A) has been complied with by the appellant and that the appellant had been making the payment in accordance of sub-rule 3A (b) (iii).

7. The Department has alleged the credit qua the sale of electricity generated by the appellant to the other customers against monetary consideration on the ground that electricity is an exempted commodity. But perusal of order under challenge in para 6.3 thereof, the Commissioner (Appeals) has recorded as follows:-

**"6.3** *Electricity is specified under the chapter heading 27160000 of the first schedule to the Central Excise Tariff Act, 1985 (5 of 1986). Hence "Electricity" which*

*is generated by the Appellant within the same premises and under the same title in which Sponge Iron, Billets/M.S. Ingots, are generated, are excisable goods."*

That is the electricity is held to be an excisable goods. Once it is held as excisable, denial of cenvat credit there upon is contradictory to the legislative intent. The findings are therefore, liable to be set aside.

8. Coming to the plea of the denial of cenvat credit on such quantity of input as is used in or in relation to the manufacture of exempted goods all for provision of exempted services, it is held that iron fills as are emerging as a by-product but an inevitable waste due to being segregated during the manufacture of the final product, the appellant is not liable to be vested with any liability on account of Rules 6 (3) (b) of CCR, 2004. I draw my support from the case of **Union of India vs. Hindustan Zinc – 2014 (303) ELT 321 (SC)** as was decided by Hon'ble Apex Court. In view of said decision, the findings of the Commissioner (Appeals) are liable to be set aside. This Tribunal in another decision of **Maa Mangala Ispat Pvt. Ltd. – 2013 (293) ELT 380 (Tri. – Del.)** has held as follows:-

*"5. I have considered the submission made from both sides and perused the record. In this case, the iron ore fine emerges as an inevitable waste while screening and sieving the iron ore for removal of smaller particles prior to manufacture of sponge iron. The provisions of Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004 are applicable when a manufacturer consciously manufactures two products - an*

*excisable and the other fully exempted product using common inputs and/or input services. In such circumstances, in terms of the provisions of Rule 6(2) the manufacturer is required either to maintain separate account and inventory for the input and input services which are used in the manufacture of dutiable and exempted final product and avail Cenvat credit only in respect of inputs/input services used in the manufacture of dutiable final product and if he does not maintain such separate account and inventory, he would be required to pay an amount equal to 10% of the value of the exempted final product at the time of clearance. In this case, I find that iron ore fine has emerged as an unavoidable and inevitable waste and compliance with the provisions of Rule 6(2) is impossible. The provisions of Rule 6(3)(b) of Cenvat Credit Rules, 2004 become applicable only if the manufacturer consciously manufactures dutiable and exempted final product using common Cenvat credit availed inputs and/or input services and does not comply with the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004. It would not apply in a case like this where the exempted final product emerges as an unavoidable waste or by-product and compliance with the provisions of Rule 6(2) is impossible. In the case of Rallis India Ltd. (supra) the Hon'ble Bombay High Court held that in such circumstances, the provisions of Rule 6(2) would not be applicable. In view of this, I hold that there is no infirmity in the impugned order. The Revenue's appeal is accordingly dismissed. Cross-objection also stands disposed of."*

9. In view of entire above discussion, the order under challenge is held as not sustainable. Same is accordingly, set aside. Appeals stands allowed.

[Pronounced in the Open Court on 07.12.2018]

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**