CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Appeal No. E/2253/2010 & E/941/2012

(Arising out of Order-in-Original No. 2/2010-(C.E.)-Commr. dt. 30.07.2010 passed by Commissioner, Customs & Central Excise)

Matrix Laboratories Ltd ….. **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - I ….. **Respondent(s)**

Appearance

Shri G. Sivadas, Advocate for the Appellant.
Shri Dass Thavanam, Superintendent/DR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 04.07.2018
Date of Decision: 04.07.2018

FINAL ORDER No. A/30768-30769/2018

[Order per: M.V. Ravindran]

1. These two appeals are directed against Order-in-Original No. 2/2010-(C.E.)-Commr., dated 30.07.2010.

2. The relevant facts that arise for consideration in Appeal No.E/2253/2010 are, appellant is engaged in business of manufacturing bulk drugs and drug intermediates; some of them are dutiable and some of them are exempted products; avails CENVAT credit facility as per the provisions of CENVAT Credit Rules, 2004 and has devised a method of availment of

CENVAT credit on the common inputs by which, they avail the CENVAT credit based upon the consumption of common inputs in the manufacturing activity of dutiable products and utilizes the same for discharge of central excise duty on the final products. After an investigation, the lower authorities issued a show cause notice dated 24.08.2009 demanding an amount equivalent to 8% or 10% value of the exempted goods cleared during the period August, 2004 to December, 2008 on the allegation that appellant had not maintained any separate records for respective consumption of inputs used in dutiable and exempted goods. Appellant contested the show cause notice on merits as well as on limitation. On merits it was contended and records were produced to show that they availed CENVAT credit on the common inputs based upon the actual consumption of the inputs for dutiable products, computed from the batch records maintained by them for the bulk drugs and drug intermediates. The adjudicating authority did not agree with the contentions raised and confirmed demands raised along with interest and also imposed penalties.

3. In Appeal No.E/941/2012, the issue is regarding application made by the appellant for reversal of CENVAT credit on the common inputs used during the relevant period as per the retrospective amendment to the provisions of Rule 6 of the CENVAT Credit Rules, 2004.

4. Learned Counsel after taking the Bench through the entire case records submits that if Appeal No.E/2253/2010 is decided, the second appeal would become infructuous. It is his submission that the appellant herein, had as per the provisions of Rule 6 required to take CENVAT credit of the inputs used in the manufacturing of excisable goods only. It is his submission that the provisions of Rule 6(2) and 6(3) indicate that the

appellant is entitled to avail the CENVAT credit of the entire amount of central excise duty paid on the inputs and before the clearance of exempted goods needs to reverse the CENVAT credit on the inputs consumed in exempted goods. It is his submission that the appellant herein has in fact gone a step ahead and had availed CENVAT credit attributable to those inputs which are used for manufacturing of dutiable goods. He would submit that the issue is no more *res integra* and is covered by an order of the Tribunal in the case of IPCA Laboratories Ltd [2015-TIOL-1097-CESTAT-Del.], Gland Pharma Ltd [2016 (343) ELT 502 (Tri.-Bang.)] and Foods Fats & Fertilizers Ltd [2009 (247) ELT 209 (Tri.- Bang.)]. He reads extensively from the aforesaid judgments.

5. Learned Departmental Representative on the other hand would draw our attention to the findings recorded by the adjudicating authority in Appeal No.E/2253/2010. It is his submission that the responsible officers of the appellant herein had stated that they do not maintain separate raw material records for the inputs used in dutiable and exempted goods while they claim that they avail CENVAT credit only in respect of the inputs used for dutiable goods. It is his submission that the provisions of Rule 6 of CENVAT Credit Rules do not come in leeway for doing such an activity. He would submit that the lower authorities were correct in confirming an amount equivalent to 8% or 10% of the value of exempted goods cleared by the appellant herein.

6. On careful consideration of the submissions made, we find that appellant has been taking a consistent stand before the lower authorities that they had availed CENVAT credit only to the extent of the inputs utilized in manufacturing of dutiable final goods while receipts of the common inputs

are recorded in one raw material register as a whole. They had produced the said records before the lower authorities and are also annexed to the appeal memoranda herein.

7. On perusal of the records which are annexed to the appeal memoranda, we do find that the appellant is able to co-relate the consumption of inputs to the manufacturing and clearances of dutiable products. Appellant being manufacturers of bulk drugs and drug intermediates are also covered under the provisions of Drugs and Cosmetics Act and Rules made there under, which mandates the appellant to maintain definitive accounts of the consumption of all the inputs and packing materials for the manufacturing of bulk drugs and intermediates, which is required to be done batch wise and the data on such records is the basis on which the appellant had availed CENVAT credit on the inputs consumed for dutiable goods. We find that such data is not disputed by the adjudicating authority. In our view, if assessee is required to maintain meticulous records of the consumption of materials used for manufacturing of bulk drugs and drug intermediates, we do not find any reason to hold that consumption of inputs for the manufacturing of dutiable goods needs to be done in a different way.

8. It is also undisputed that appellant herein had only shown the receipt of common inputs in one raw material register while that issues in the said raw material register indicate the issues made batch wise for manufacture of bulk drugs and drug intermediates. If it be so, working out of the materials consumed for manufacturing of excisable goods and availing of proportionate CENVAT credit on such inputs is/can be one of the scientific

way of following the provisions of Rule 6(2) and 6(3) of the CENVAT Credit Rules, 2004.

9. It can be seen from the provisions of Rule 6 that the entire emphasis of the said provisions are for non-availment of CENVAT credit attributable to the inputs consumed in the manufacturing of exempted goods, the procedure mentioned in Rule 6(3), envisages one of the ways of maintaining separate accounts for receipt of consumption of inputs for dutiable and exempted goods. In our view, the system adopted by the appellant is also resulting in bifurcated availment of credit only in respect of the inputs used in the manufacturing of dutiable goods, which we find needs to be accepted. We find that similar/identical issue came up before the Tribunal in the case of IPCA Laboratories Ltd (supra) wherein the Bench held that the appellant therein having not taken and foregone the CENVAT credit attributable to the quantum of the input services based upon the turnover of the exempted products cannot be faulted with.

10. We find that the Tribunal in the case of Gland Pharma (supra) was more specific on the point and we reproduce para 4 of the said decision.

> *"4. As regards the submission that the accounts should have been maintained and segregation should have been done at the time of receipt itself, we find that this would not have been possible under the circumstances and there are several decisions taking a view that even subsequent reversal of credit would be sufficient and in this case before the raw materials/inputs were issued for manufacture of exempted goods, credit has been reversed. Once credit has been reversed and raw materials have been taken out for manufacture of exempted goods, in our view the obligation cast on the assessee to maintain separate accounts in respect of inputs for exempted goods can be laid to have been fulfilled. Therefore, it can be said that when the inputs were taken out for manufacture of exempted goods, they ceased to be cenvated inputs and since separate accounts for the inputs were maintained at this stage, it can be considered as fulfilment of obligation."*

11. In yet another case, in the case of Foods Fats and Fertilizers Ltd (supra), similar issue cropped up before the Tribunal. Tribunal after recording the factual position and submissions, in para 8 held as under:

> *"8. .... It is seen that the appellants had not taken entire credit on the duty paid on the inputs used in dutiable and exempted products. It is on record that they had availed credit on pro-rata basis. In other words, the credit has been taken only in respect of inputs used in dutiable products. It is a fact that the appellants have stated that they could not have separate inventory for the input used in dutiable and exempted products. That does not mean that they have not maintained separate accounts for the receipt and consumption of inputs used in dutiable and exempted products...."*

12. It can be seen that similar issue has been decided by the Tribunal in the case of Foods Fats and Fertilizers (supra) (wherein one of us, M.V.Ravindran was a member) accepting the analogy that availment of CENVAT credit proportionate to the inputs used in dutiable goods can also be one of the way of following the provisions of Rule 6 of CENVAT Credit Rules, 2004.

13. In view of the facts and circumstances of this case and the findings herein above, we hold that the impugned order in Appeal No.E/2253/2010 is unsustainable and liable to be set aside and we do so. The impugned order is set aside and the appeal is allowed.

14. The issues raised in Appeal No.E/941/2012 remains of academic interest and the appeal is dismissed as infructuous.

15. The appeals stands disposed of as indicated herein above.

(Operative part of this Order was pronounced
on conclusion of hearing.)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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