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

Division Bench

Court – I

APPEAL No. E/1171/2012

(Arising out of **Order-in-Appeal** No. 14/2012 (V-I)CE, dated 06.03.2012 passed by CCE, C&ST (Appeals), Visakhapatnam)

DIVI's LABORATORIES LIMITED	..	APPELLANT
	Vs	
CCE, C&ST, Visakhapatnam	..	RESPONDENT

Appearance

Shri B. V. Kumar, Advocate for the appellant

Shri C. Mallikharjun Reddy, Superintendent/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

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

Date of Hearing: 10.01.2019
Date of Decision: 10.01.2019

FINAL ORDER No. A/30058/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 14/2012 (V-I)CE, dated 06.03.2012.

2. The relevant facts that arise for consideration, after filtering out unnecessary details are appellant, during the period July 2009 to March

2010, was functioning as an 100% EOU and were manufacturing bulk drugs "IOPAMIDOL". Appellant had, during the period, cleared the said product to DTA at nil rate of duty by claiming exemption for manufacture for which appellant was using certain common inputs on which CENVAT credit has been availed. Since appellant had not maintained any separate accounts for the consumption of such common inputs used for exempted and dutiable goods, show cause notice was issued for reversal of the amount of 5% of the value of the exempted goods. Appellant contested the show cause notice on merits before the adjudicating authority and claimed that the demand of reversal of 5% of the value of the amount under the provisions of Rule 6 of CENVAT Credit Rules, 2004 does not arise. On an appeal to the first appellate authority, the same was rejected and the Order-in-Original was upheld.

3. Ld. Counsel submits that the bulk drugs when cleared to DTA can be treated as non-excisable and exempted goods after appellants have paid duty on the inputs in terms of Notification No. 52/2003-Cus, dated 31.03.2003 as amended from time to time. It is his submission that on discharge of duty liability on the imported inputs used for the bulk drugs, the bulk drug cleared to DTA be treated as exempted/non-excisable goods. It is his further submission that both the lower authorities have erred on this point when they have not considered this fact. It is his further submission that the amount so worked under Rule 14 of CCR 2004 is incorrect and needs to be set aside.

4. Ld. DR reiterates the findings of the lower authorities.

5. On careful consideration off the submissions made by both sides and perusal of records, we find that the demand raised in the show cause notice, in the case in hand, is the amount equivalent to 5% of the value of "IOPAMIDOL" cleared in DTA by claiming exemption being bulk drug. It is undisputed that the said bulk drug is eligible for exemption if cleared in DTA; also undisputed that appellant has been utilising common inputs for manufacturing of this bulk drug; has availed CENVAT Credit on the common inputs so used, but has not maintained separate accounts as required under Rule 6(2) of CCR 2004. In our view, both the lower authorities were correct in confirming the demands raised. We find that the arguments of the appellant before the Tribunal, as put forth by the Counsel, are totally unacceptable inasmuch the amount paid by the appellant under notification No. 52/2003-Cus is in respect of the inputs which were consumed for manufacturing of the bulk drug cleared in DTA unit. We are not able to understand how payment/discharge of customs duty on the inputs consumed for the said bulk drug cleared to DTA by claiming exemption is equivalent to the discharge liability as per Rule 6(3) and claiming that the goods cannot be considered as exempted goods and the bulk drug can be called as an exempted/non excisable goods. In our considered view, having not disputed that there is consumption of common inputs for manufacturing of bulk drug cleared, while clearing to DTA claiming exemption and not maintaining separate accounts, the

confirmation of the demands under Rule 6(3) of CCR 2004 for an amount equivalent to 5% of the value of the exempted goods is correct and legal and does not require any interference and we hold the impugned orders are reasoned one.

6. In view of the foregoing, we hold that the appeal filed by the assessee appellant is devoid of merits and is accordingly rejected.

7. Impugned order is upheld and appeal is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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