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

Division Bench
Court – I

Central Excise Appeal No. 402 of 2012

(Arising out of Order-in-Appeal No. 22/2011-(C.E) Commr dt.21.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Astrix Laboratories Ltd **......Appellant**
Sy No. 10 & 42, Gaddapotharam (Vill)
IDA, Kazipally Industrial Area,
Jinnaram Mandal
Medak Distt

VERSUS

Commissioner of Central Tax,
L.B. Stadium Road,
Basheerbagh, **......Respondent**
Hyderabad

Appearance
Mr. G. Prahlad, Adv for the appellant.
Mr. C. Mallikarjuna Reddy, Authorized Representative for the respondent.

Coram:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 30852/2020

Date of Hearing: 20.02.2020
Date of Decision: 20.02.2020

[Order per: P. VENKATA SUBBA RAO]

This appeal is filed by the appellant challenging the order-in-original No. 22/2011 dated 21.11.2011 issued by the Commissioner of Customs and Central Excise, Hyderabad. The appellant is a manufacturer of bulk drugs and drug intermediaries and manufactures both dutiable and exempted products. Up to March 2009 they had not availed any CENVAT credit on inputs used in the manufacture of goods cleared domestically but took credit only on the goods exported. From April 2009, they started availing credit on inputs used for dutiable goods cleared to DTA and on exempted goods which were exported. Learned counsel for the appellant submits that they have no common inputs and they did not avail any CENVAT credit at the time of receipt of the inputs. They availed CENVAT credit only based on the actual consumption of inputs used for manufacture of dutiable goods or used for manufacture of exempted goods which are exported. He explains their modus operandi as follows:

i. When inputs are received at the factory gate, the documents such as D.C, Central Excise invoice, Certificate of analysis and Vendor Approval etc., accompanying the inputs are sent to the security section. The security section verifies the documents with the purchase orders and thereafter sends the inputs for storage in the warehouse after entering in the inward register, details like purchase order No. Invoice No., Analytical Report No. etc.

ii. The inputs thereafter separated and stored in the warehouse as per material safety data sheet containing details of chemical substance etc.

iii. The receipt and issue of inputs is monitored by the stores section which maintains inventory record of inputs used for manufacture of exempted and dutiable goods.

iv. The production section places indent cum issue note on the stores section, and the raw material/inputs are issued from the warehouse based on the indent cum issue note.

v. Whenever the stores receive the indent from the production blocks, meant for use in the manufacture of final products, the same is updated in the material inventory record. All these records can be co-related basing on the Analytical Record no.

2. He would submit that as a pharmaceutical company they manufacture drugs in batches as required under the Drugs and Cosmetics Act, 1940 and maintain registers with respect to each batch of every drug. In the pharmaceutical industry, the ratio of the quantities of inputs required for

manufacture of unit amount of output is fixed as the consumption coefficient. After the drugs are manufactured for either clearance to DTA on payment of duty or exempted goods for export, they take credit on the quantity of inputs used, calculated as per the consumption coefficient.

3. The show-cause notice alleges that the appellants have not maintained separate sets of accounts for dutiable and exempted products and therefore are required to reverse 6% of the value of exempted goods. Hence, show-cause notice raised the demand for reversal of CENVAT credit along with interest and the same has been confirmed by the impugned order and penalty has been imposed.

4. Learned counsel would submit that they have availed CENVAT credit only on inputs used for dutiable goods or exported goods which are exempted based on actual consumption. Therefore, there is no requirement of them to reverse any CENVAT credit under Rule 6(3). He would submit that on an identical issue in their own case for the previous periods this Bench as reported in 2019(5)-TMI-1344-CESTAT-Hyd and 2018 (3)-TMI-837-CESTAT-Hyd, has already been decided in their favour and the same ratio needs to be followed in this case. Regarding the reversal of credit for exempted goods manufactured and exported, it has been decided by the Hon'ble High Court of Bombay in the case of Repro India Ltd Vs Union of India [2009(235)ELT 614 (Bom)] that an assessee can remove exempted goods under bond and such clearance would come under the ambit of Rule 6(6)(v) of CENVAT Credit Rules 2004 and hence no reversal of CENVAT credit is required. He therefore, prays that the demand of reversal of CENVAT credit along with interest may be set aside and the penalties may also be set aside.

5. Learned A.R. supports the impugned order.

6. We have considered the arguments of both sides and perused the records. The pharmaceutical industry is a unique industry inasmuch as several of the inputs are used for manufacture of many products. For instance a solvent like acetone can be used in the manufacture of many pharmaceuticals. Needless to say when one of these chemicals is purchased, it is stored as such, separately from other chemicals and it may be used in the manufacture of any pharmaceutical drugs, duty paid or exempted. In this present case, the appellant is not taking any CENVAT credit at all on the invoices at the time of receipt of inputs. There is a specific input output co-relation for every batch of every drug known as consumption coefficient according to which the quantity of inputs which have gone into the manufacture of that particular batch of the particular drug can be ascertained. The appellant has been availing CENVAT credit only on the proportionate amount of inputs which are gone into manufacture of either dutiable goods or in the manufacture of exempted goods which are exported. Therefore in our considered view there is no availment of common input credit. The credit is availed only on such quantity of inputs as gone into the manufacture of dutiable products or exempted products which are exported.

7. The next question for consideration is whether in a case where the exempted goods are exported under bond, whether the assessee is required to reverse an amount under Rule 6(3) or whether it gets covered by Rule 6(6) and hence no reversal is required. The Hon'ble High Court of Bombay in the case of Repro India Ltd [2009(235)ELT 614 (Bom) held as follows:-

> "We may reproduce Rule 6(6) of the Cenvat Credit Rules, 2002, which read as under :-
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> "The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -
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> (i) cleared to a unit in a special economic zone; or
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> (ii) cleared to a hundred per cent export oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995 number G.S.R. 602(E) dated the 28th August, 1995; or

(v) cleared for export under the items of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting."

A perusal of the aforesaid Rules would clearly show that sub-rule (i) to (vi) are identical and the difference in Rule 6(6) of the Cenvat Credit Rules, 2004 and Rule 6(5) of the Cenvat Credit Rules, 2002 is not relevant for the purpose of the present case. Rule 6(1), 6(2), 6(3) and 6(4) of the Cenvat Credit Rules under Cenvat Credit Rules, 2002 as well as under the Cenvat Credit Rules, 2004 remains the same. As noted earlier the object and purpose of Rule 6(6) of Cenvat Credit Rules, 2004 is to promote the policy of the Government that the benefit of duty paid on input is available as credit in respect of certain exempted goods as well as the exempted goods exported under bond. The minor change in the wordings of Rule 6(6) of the Cenvat Credit Rules, 2004 by using the term "excisable goods" instead of exempted goods is that the term 'exempted goods' may not cover the dutiable goods which are exported under bond. Therefore, in order to widen and cover both dutiable and exempted goods exported under bond, Rule 6(6) of Cenvat Credit Rules, 2004 uses the expression "excisable goods". As an illustration, if a car which is dutiable is exported under bond without payment of duty there may be doubt as to whether credit on the inputs will be available, since the car is cleared without payment of duty under Rule 6(5) of Cenvat Credit Rules, 2002. It could be argued that it covers only the exempted goods exported and not dutiable goods exported. In order to cover such a situation also, Rule 6(6) of Cenvat Credit Rules, 2004 used the expression 'excisable goods' which is wider to include both dutiable as well as exempted goods.

10. In our opinion therefore, the petition will have to be allowed. The Petitioners are entitled to remove the goods on furnishing the bond as set out in Annexure 16 in Form B-1 of the Central Excise Manual. Rule made absolute accordingly. There shall be no order as to costs."

8. We also note that in respect of the same appellant, this Bench in our earlier orders reported in 2018(3)-TMI-837-CESTAT-Hyd and 2019-(5)-TMI-1344-CESTAT-Hyd has decided in favour of the appellant on both these issues.

9. In view of the above, we find that the issue is no longer *res integra* and the appellant is not required to reverse CENVAT credit as they have not taken credit on common inputs and have taken credit only on the proportionate amount of inputs which have gone either into the manufacture

of dutiable goods or in the manufacture of exempted goods which are exported.

10. In view of the above, we find that the impugned order needs to be set aside and we do so. The impugned order is set aside and the appeal is allowed with consequential relief any.

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

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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