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

Division Bench
Court – I

Excise Appeal No. 772 of 2012
(Arising out of OIO No.26/2011 C.Ex dt.27.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

3F Industries Ltd
Tanuku Road, Tadepalligudem,
West Godavari Dist., AP – 534 101

......Appellant

VERSUS

Commissioner of Central Tax
Guntur - GST
CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

......Respondent

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30431/2023

Date of Hearing: 17.08.2023
Date of Decision: 17.08.2023

[Order per: ANIL CHOUDHARY]

The short question that is required to be determined in this Appeal is - whether input credit of service tax taken by the Assessee, used in or in relation to the manufacture of (a) Sal Stearin and Shea Stearin, both of which are exempted, and were exported and (b) Stearic Acid manufactured - which is dutiable, is permissible or not.

2. The facts, as narrated in the show cause notice (issued for extended period of limitation), are that the Assessee engages the service of three job workers viz., M/s Gouthami Solvent Oil Ltd., M/s Godavari Edible Bran Oil Ltd., and M/s Asia Pacific Commodities Ltd.; the first two produce sal extractions and the third produces shea stearin/shea olein, sal stearin/sal olein. All these products classifiable under chapter heading 15 of the Central Excise Tariff are exempted from payment of duty, as per Notification No.3/2006-CE dated 1.3.2006. It further appeared that shea stearin and sal stearin were exported by the Assessee, under claim for rebate of duty paid on packing material. It appeared that in view of this, the Cenvat Credit of tax paid on input services in

respect of processing sal seed into sal extractions, as well as processing of shea fat/shea oil into shea stearin/sal stearin/shea olein/sal oelin is not permissible. The reason being the specific prohibition in Rule 6(1) of Cenvat Credit Rules, 2004 (CCR), against allowing the credit on any quantity of input/input service, used in the manufacture of exempted goods. The notice also states that the only exception is provided in Rule 6(2), which has not been adhered to. The notice further states that the entire credit of tax has been utilized for payment of duty on stearic acid and proposes recovery of the same along with interest. Penalties were also proposed under Rule 15 of the CCR,2004 read with Sec 11AC of the Central Excise Act.

3. The Assessee on the other hand contends as follows:

a) They are taking Service Tax Credit proportionate on input service, used in relation to manufacture of shea stearin and sal stearin, exported as per Rule 5 read with Rule 6(6)(v) of Cenvat Credit Rules, 2004.
b) Shea and sal stearin are exclusively exported; shea olein is captively consumed as raw material in the manufacture of dutiable stearic acid; sal olein is used as one of the raw materials in the manufacture of Vanaspathi, which is an exempted item. They are entitled to avail the credit on exempted goods, which are exported and also on goods which are duty paid.
c) The details of 'Shea stearin' and 'sal stearin' were shown in ARE-2s at the time of export, though not shown in ER1 up to 2008.

4. The period of dispute is from 2006-07 to 2010-11 wherein Cenvat Credit of Rs.1,04,46,199/- has been disallowed along with interest and equal penalty, confirming the SCN dated 31.01.2011, which was issued invoking extended period of limitation.

5. Being aggrieved, the Appellant/Assessee is in Appeal before this Tribunal.

6. Learned Advocate for the Appellant, inter alia, urges as follows:

6.1 It is submitted at the outset that the issue of eligibility of cenvat credit on inputs and input services used for the manufacture of exempted goods exported, is no more res integra, and in the appellant's own case, this Tribunal allowed the appeal in the identical case for the past period. Thus, the demand is not sustainable both on merits and on limitation, since the activity of the appellant was in the knowledge of the department throughout. The impugned order is passed on the ground of non-eligibility of credit under Rule 6(1) read with Rule 6(2) of CCR, ignoring Rule 6(5) and 6(6) of the said Rules.

6.2 The appellant imported Shea Nut from Ghana for manufacture of Shea Stearin falling under Chapter 15, for export. The Shea Nut is used for manufacture of crude Shea Fat and further processed into Shea Stearin. This activity is got done on jobwork basis from other processors. These processors raised invoices for job work charges, along with applicable service tax and the appellant had availed credit of the same during the said period.

6.3 The appellant exports major part of the finished products i.e., Shea Stearin and Sal Stearin, and also clears them for domestic market. Both these products are exempted from cenvat duty vide Notification No.3/2006-CE NT dt.1.3.2006. Therefore, the appellant availed input tax credit paid on the input services i.e., job work charges, inward transportation, etc., only to the extent of tax paid on the input service pertaining to the exported goods, since there is no bar in availing credit on export of exempted goods.

6.4 The appellant was filing ARE-2 returns with the Range Officer at the time of export of these goods, and also filing monthly periodical returns i.e., ER-1 and ER-6 regularly, detailing the clearances made and credit availed.

6.5 The appellant was also claiming refund of the tax paid on the input services used in the goods exported by them as provided under Rule 5 of the Cenvat Credit Rules, 2002 read with Notification No.17/2009-ST dt.07.07.2009 and the jurisdictional authorities were regularly granting refund of the tax paid on the goods, used in the export of the goods. Some of the refund orders were challenged by the Revenue and Commissioner (Appeals) had rejected the appeals and confirmed the sanction of refund, and in some cases, Revenue did not file appeal against the sanction of such refund. Details of the refund orders are as follows:

a) The appellant filed a refund claim for an amount of Rs.66,212/- claiming refund of service tax paid on certain input services availed on the exempted goods exported during the period from April 2009 to July 2009. The Assistant Commissioner vide his order dt.06.05.2010 allowed the same.

b) Another refund claim of the appellant for August 2009 to October 2009 was allowed by the JAC vide his order dt.04.01.2011.
c) The department appealed against the said orders and the same were rejected by the Commissioner (Appeals), vide his common order dt.27.12.2010.
d) The appellant filed rebate claim for an amount of Rs.3,13,486/- being the credit available on packing material for the period January 2011 to March 2011 and the Deputy Commissioner had sanctioned the same vide sanction order dt.20.03.2012.
e) The appellant availed cenvat credit of Rs.96,260/- on certain testing and inspection services during the period from 2007-08 to 2009-10. A show cause notice was issued denying the said credit on the ground that the finished product exported is exempted and hence credit is not allowed. The original authority vide his OIO dt.07.05.2010 denied the credit on the said ground.
f) On appeal, the Commissioner (Appeals) vide his OIA dt.08.12.2010 upheld the OIO. On further appeal, this Hon'ble Tribunal vide Final Order No.21195/ 2015 dt.27.05.2015 in Appeal No. E/645/2011-SM allowed the appeal relying on the settled legal position in this regard.

6.6 It is clear from the above that the department is agitating on availment and also refund of the claim of input tax and also the refund of the same on export of the exempted goods. When the Revenue raised an objection that the appellant is not allowed to take credit of the duty/ tax on inputs/ input services, since his exported goods are exempted, and not cleared under Bond, the appellant had written letters to CBEC, New Delhi and also to the Commissioner of Central Excise, Guntur and Divisional Office and to RO also, with regards to the said objection.

6.7 The demand was confirmed by the lower authority vide the impugned order dt.27.12.2011 with the following observations/ findings:

a) The goods exported by the appellant are exempted vide Notification No.3/2006-CE and the goods were exported on ARE-2, under claim of rebate of duty paid on the packing material.
b) With the specific prohibition in Rule 6(1) of the CCR, 2004 and without following the procedure under Rule 6(2) ibid, credit of tax/ duty paid on services/ inputs used in manufacture of exempted goods, cannot be allowed even if they are exported.

c) Out of the total credit of Rs.1,04,46,199/- the appellant availed, an amount of credit of Rs.51,53,609/- was used for payment of duty on stearic acid.

d) The appellant had not mentioned the details of credit availed on the input services in the returns filed by him. The assessee' s contention that details of exempted goods are shown in ARE-2 and in ER-1 returns from August 2008 onwards, is not acceptable since they do not show nature of the service.

6.8 The lower authority did not discuss about the applicability of Rule 6(5) and Rule 6(6) ibid, and did not consider the decisions cited by the appellant. He had also not given any finding on the limitation, except making a bald statement in para 15 of the order that since the issue had come to light only during verification of records by the department and the appellant had not reported the details of credit taken, extended period is invocable.

6.9 As submitted above, the issue of availment of credit and eligibility of the same as refund when the exempted goods are exported, is no more res integra. As submitted above, the demand for the period 2008-09 and 2009-10 was set aside in the case of the appellant himself by this Tribunal vide Final Order No.21195/ 2015 dt.27.5.2015 in Appeal No. E/645/2011-SM, relying on the settled legal position in this regard.

6.10 The settled legal position is that availment of input tax credit and its refund cannot be denied on the ground that the goods exported are exempted from central excise duty. The appellant cites few decisions below in this regard:

a) Repro India Ltd. v. Union of India 2009 (235) E.L.T. 614 (Bom.) wherein it is held inter alia that though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no cenvat credit will be available in respect of the inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exception inter alia, in respect of the excisable goods removed without payment of duty for export under bond, in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit Rules, 2004, the Appellant are entitled to avail cenvat credit in respect of the inputs used in the manufacture of the final products being exported, irrespective of the fact that the final products are otherwise exempt.

b) Commissioner of Central Excise v. Drish Shoes Ltd2010 (254) E.L.T. 417 (H.P.) approved by Supreme Court in [Commissioner v. Drish Shoes Ltd. - 2018 (360) E.L.T. A191 (S.C.)]
c) Union of India v. Sharp Menthol India Ltd 2011 (270) E.L.T. 212 (Bom.) as approved by Supreme Court in Union of India v. Sharp Menthol India Ltd. - 2015 (320) E.L.T. A104 (S.C.)]
d) CCGST& C. Ex., Chennai v. Sutherland Global Services Pvt. Ltd. 2021 (47) GSTL 454 (Mad.)
e) Commissioner of CGST, Rajasthan v. Medicamen Biotech Ltd 2019 (368) E.L.T. 324 (Raj.)
f) Aurobindo Pharma Ltd. v. Commissioner of C. Ex., Visakhapatnam-I 2011 (265) ELT 358 (Tri-Bang)
g) Well Known Polyesters Ltd. v. Commissioner of C. Ex., Vapi 2011 (267) ELT 221 (Tri-Ahmd.)
h) Commissioner of C. Ex., Ahmedabad-III v. Gujarat Ambuja Exports Ltd. 2014 (311) ELT 718 (Tri-Ahmd)

6.11 Further, as submitted above, said issue is settled in the case of the appellant himself for the past period. However, same was raised again for the subsequent period, that too for the period beyond normal limitation, and such action is illegal and improper.

6.12 It is also submitted that denial of credit of taxes paid on inputs and input services used for exported goods, is in violation of the policy of the government, that exports shall be tax free.

6.13 Further, as held in the following cases, even if bond/ LUT is not executed while exporting the exempted goods, such non-execution is only a procedural lapse, for which cenvat credit cannot be denied since there is no duty involved on them to execute a bond. Reliance is placed on -

a) Well Known Polyesters Ltd. vs. Commissioner of C.Ex., VAPI 2011 (267) ELT 221 (Tri-Ahmd.)
b) Commissioner of C. Ex., Ahmedabad-III vs. Gujarat Ambuja Exports Ltd. 2014 (311) ELT 718(Tri-Ahmd.)
c) Jolly Board Ltd. vs. Commissioner of Central Excise, Aurangabad 2015 (321) ELT 502(Tri-Mumbai)

d) Mahindra & Mahindra Ltd. vs. Commissioner of Ex., Mumbai-V 2016 (331) ELT 123 (Tri-Mumbai)

6.14 The demand is also inflated by demanding an amount of Rs.1,04,46,199/-, though the impugned order itself in para 3 thereof mentions that out of this amount, an amount for Rs.51,53,609/- was used for payment of excise duty on Stearic Acid, which was a dutiable product and credit is allowable.

7. Learned Advocate also urges that Appellant is eligible to avail credit of the service tax paid on the job work charges as follows:

(a)	Total credit of service tax available as per the invoices	Rs.1,39,91,458/-
(b)	Credit availed in proportion to the exported goods	Rs.56,47,226/-
(c)	Credit availed for clearance of dutiable product	Rs.47,98,973/-
(d)	Credit not taken for the exempted goods cleared to DTA	Rs.35,45,259/-
(e)	Total credit allowed and availed (b+c) and demanded	Rs.1,04,46,199/-

8. Opposing the Appeal, Learned DR for Revenue relies on Impugned Order. He, *inter alia*, urges that credit cannot be taken under Rule 6(1), as Appellant is admittedly manufacturing exempted goods, and accordingly, the Impugned Order is justified.

9. Heard both sides and perused the records.

10. As is evident from record, Revenue has mainly relied on the argument that Rule 6(1) of CCR, 2004 bars taking of Cenvat credit on *inter alia*, input service, if it is used for manufacture of exempted goods. Since the goods under Chapter 15 were exempted under Notification 03/2006 dated 01.03.2006, thus in terms of Rule 6(1) itself, they are not entitled to take credit. In the Impugned Order, the factual matrix that goods were exempted but exported, has not been denied, though relying on Rule 6(1), it was held that credit itself was not admissible.

11. Having considered the rival contentions, we find that the issue herein is squarely covered by the precedent ruling of Hon'ble Bombay High Court in the case of Repro India Ltd vs UOI [2009 (235) ELT 614 (Bom)]. The relevant portion is reproduced below:

"7. We may also consider the provisions of Rule 6 of the Cenvat Credit Rules, 2004. The relevant portion of Rule 6(6)(v) reads as under :-

> *"(6) 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 -*
> *(i).......*
> *(ii) .....*
> *(iii) .....*
> *(iv) .....*
> *(v) cleared for export under bond in terms of provisions of the Central Excise Rules, 2002."*

The petitioners had manufactured both dutiable and exempted final product (packaged software and printed books respectively). The petitioner has taken credit on input used in the manufacture of dutiable as well as exempted final products. If the exempted products are exported outside India the provisions of Rule 6(6)(v) of the Cenvat Credit Rules are applicable. Therefore, the bar provided under Rule 6(1) and the liability created under Rule 6(3)(b) of the Cenvat Credit Rules, 2004 are not attracted. By denying to the petitioner from exporting the printed books under bond what the respondents want to do is in fact to levy 10% on the sale price of the printed books in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004. In our opinion this is wholly impermissible.

The provisions as now contained in Rule 6 of the Credit Rules, 2004 were contained in Rules 57C and 57CC of the Central Excise Rules, 1944 as they stood prior to 1st April, 2000. From 1st April, 2000 till 30th June, 2001 similar provisions were contained in Rule 57AD of the Central Excise Rules, 1944. In the context of these Rules circular dated 8th November, 2001 of the Ministry of Finance was issued. It dealt with the question whether 8% has to be paid on the sale price of exempted goods. Under Rule 6(3)(v) of Cenvat Credit Rules, 2004, to 8% has been increased to 10%. The relevant portion of the Circular dated 8th November, 2001 reads as under :-

> *"Further, it is now clearly and specifically mentioned in Rule 57AD(4) that the provisions relating to non-availability of Modvat credit and reversal @ 8% is not applicable in case the exempted goods are cleared for export under bond in terms of the provisions of Rule 13 .*
> *In the new rule 57AD, it has been explicitly provided what was implicity in erstwhile rules 57C and 57CC. Further, the present rule 57AD(4) clearly goes on to show that the exempted goods are eligible to be exported under bond. To interpret otherwise will render the new rule 57AD(4) redundant.*
>
> *In view of the foregoing in this case the provisions of sub-rule 57C(1) are satisfied as stipulated under Rule 57C(2) as well as Rule 57CC(6)1 and there was no need to comply with the provisions of rule 57CC1). Therefore, it is clear that an amount of 8% of the price of the goods exported is not required to be paid irrespective of whether the exported goods are exempted or otherwise."*

It would thus appear that the direction of the respondent No. 2 to the petitioners to pay 10% even though printed books were exported is not legally sustainable. It is only in the event the petitioners does not export the printed goods and do not maintain the account as contemplated by rule 6(2) the petitioner would be required to pay 10% on the sale price of the printed books not so exported.

Even though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 the petitioners are entitled to avail Cenvat credit in respect of *the inputs used in the manufacture of the final products being exported irrespective of the fact that the final products are otherwise exempt.*

8. The Cenvat credit is allowed n (sic) the duty paid on inputs to mitigate the effect of double taxation of levying duty on inputs as also on the final product. If, however, the exempted final product is exported it calls for a special relaxation/dispensation to make the goods of the country internationally competitive. As an illustration suppose a final product like tractor is otherwise exempted from excise duty even for domestic consumption and such tractors are exported. The various inputs like engines, etc., used in the tractor may have suffered excise duty. The intention is not to export taxes but only to export the goods. If the inputs like engine going into the manufacture of export commodity namely tractors are subject to excise duty, the Indian manufacturer of tractors becomes internationally uncompetitive. This appears to be the object behind the Government enacting special scheme to ensure that the duty is not levied even on inputs going to the export products. Rule 6(6)(v) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied even on inputs going to the export products.

This method of adjustment, both from the point of Government and the assessee is to allow the assessee to take Cenvat credit on the inputs used in the export products and allow the assessee himself to adjust it for payment of duty on other products. If the adjustment is not possible, Cenvat credit is refunded in cash. This appears to be the Scheme of Rule 5 of the Cenvat Credit Rules, 2004. With a view to achieve this object, the Central Government has specifically enacted Rule 6(6)(v) of the Cenvat Credit Rules, 2004 to the effect that the bar created by Rule 6(1) will not apply for goods exported. Considering the conscious and express provisions contained in Rule 6(6)(v) for exported goods, to deny the permission to export under bond and/or to levy 10% on the value of the exported goods under Rule 6(3)(b) on the footing that the printed books exempt and, therefore, attract Rule 6(1) would be incorrect and completely nullify and frustrate Rule 6(6)(v).

9. We may also consider the various clauses of Rule 6(6) which would indicate that they relate to goods which are wholly exempt from duty. Rule 6(6)(i) relates to supply to SEZ. These are wholly exempted from duty vide Notification dated 19th October, 2001 and notification dated 22nd July, 2003. Rule 6(6)(ii) relates to supply of goods to Export Oriented Units. These are wholly exempt by Notification dated 31st March, 2003. Rule 6(6)(iii) relates to goods supplied to a unit located in Electronic Hardware Technology Park or Software Technology Park. Such supplies are exempt from duty by Notification dated 31st March, 2003. Rule 6(6)(iv) relates to supplies to United Nations or an international organisation for their official use. These are exempt by Notification No. 108/95. Rule 6(6)(v) relates to export under bond. Rule 6(6)(vi) relates to gold or silver arising during refining of copper. These are exempt from payment of duty by Notification No. 5/2006-C.E., dated 1st March, 2006. It would thus be clear that all the clauses of Rule 6(6) are enacted only to deal with the situation when the final products are exempt from payment of duty. If a final product is not exempted from duty, Rule 6(1) is not attracted at all and hence Rule 6(6) is unnecessary. Rule 6(6) is precisely needed only when the final products are exempt from payment of duty. In this context the Revenue itself has accepted that under the provisions of Cenvat Credit Rules, 2002 there were provisions for removal of exempted goods under bond but the same was not available with effect from 9th September, 2004 under Cenvat Credit Rules, 2004.

We may reproduce Rule 6(5) of the Cenvat Credit Rules, 2002 which reads as follows :-

> *"(5) The provisions of sub-rule (1), sub-rule (2), sub-rule (3) and sub-rule(4) shall not be applicable in case the exempted goods are either -*

(i) cleared to a unit in a free trade zone; or
(ii) cleared to a unit in a special economic zone; or
(iii) cleared to a hundred per cent export oriented undertaking; or
(iv) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
(v) 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-CentraI Excise, dated the 28th August, 1995, number GSR 602(E) dated the 28th August, 1995; or
(vi) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002."

We may reproduce Rule 6(6) of the Cenvat Credit Rules, 2002, which read as under :-

> *"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 -*
>
> *(i) cleared to a unit in a special economic zone; or*
> *(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."

12. We further find that the learned Commissioner has not considered the applicability of Rule 6(6)(v) of Cenvat Credit Rules, 2004 which reads as follows:

> *"(6) 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 -*
>
> *(i).......*
> *(ii) .....*
> *(iii) .....*
> *(iv) .....*
> *(v) cleared for export under bond in terms of provisions of the Central Excise Rules, 2002."*

13. Thus, there is no applicability of Rule 6(1), when the situation falls within the ambit of Rule 6(6)(v) and therefore, credit on exempted goods or excisable goods exported under bond cannot be denied. Though, it is not clear whether exports were under bond or LUT but were surely under ARE-2. Further, in view of judgment, cited supra, even exempted/excisable goods are entitled for export under bond. Thus, once an export has not been disputed in respect of exempted goods in Impugned Order, the denial of proportionate credit is not based on correct appreciation of relevant provisions under CCR 2004.

14. Therefore, in view of the provisions of Rule 6(6)(v) of CCR 2004, we find that the Impugned Order is erroneous, as the same has been passed ignoring the provisions of Rule 6(6)(v) of CCR. Accordingly, in view of the findings, we allow the Appeal and set aside the Impugned Order. Appellant is entitled to consequential benefits, in accordance with law. The ground of limitation is left open.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda