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

Division Bench – Court No. – I

Excise Appeal No. 3491 of 2012

(Arising out of Order-in-Original No. 85/2012-C.Ex. dt.24.09.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

The Andhra Sugars Ltd
Chemicals & Fertilizers Division, Saggonda,
West Godavari Dist., AP – 534 318 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

Appearance
Shri N. Anand, Advocate for the Appellant.
Shri V. Srikanth Rao, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30179/2025

Date of Hearing: 11.04.2025
Date of Decision: 16.05.2025

[Order per: A.K. JYOTISHI]

The Andhra Sugars Ltd (hereinafter referred to as the appellant) are in appeal against the OIO dt.24.09.2012 (impugned order), whereby, the demand of Rs.2,55,09,877/-, raised in terms of 3 SCNs for the period April, 2005 to August, 2011, has been confirmed.

2. The issue involved is whether Rule 6(3) of Cenvat Credit Rules, 2004 (CCR) is applicable in respect of final goods cleared under Notification No. 04/2006-CE dt.01.03.2006 read with procedure under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 (hereinafter referred to as CER, 2001) treating it as exempted goods in terms of Rule 6(1) & 6(2) of CCR.

3. The appellants are engaged in manufacture of various excisable goods, including Sulphuric Acid, which is dutiable and applicable duty has been paid by them. However, the appellants were also clearing the said

sulphuric acid to various manufacturers of fertilizers under CER, 2001 (erstwhile Chapter X procedure under Central Excise Rules). The Department has essentially raised multiple SCNs on the similar grounds that the said clearance of sulphuric acid to fertilizer units would amount to exempted clearance and therefore, Rule 6 of CCR would be attracted and since they were not maintaining separate accounts for receipt, inventory and consumption of inputs like raw sulphur, Vanadium Pentoxide (V_2O_5) Catalyst and input services, etc., they were required to pay an amount equivalent to 10%/5% of the value of exempted goods.

4. On adjudication, the adjudicating authority has examined the defence submissions as well as certain case laws relied upon by the appellants and felt that sulphuric acid cleared in terms of Notification No.06/2002-CE dt.01.03.2002 (as amended from time to time) and Notification No.04/2006-CE dt.01.03.2006 (as amended from time to time) providing for clearance at 'Nil' rate of duty has to be treated as giving exemption to the said goods and therefore, such goods will be treated as exempted goods attracting the obligation under Rule 6(3) of CCR. He has relied on the definition of 'exempted goods', which means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to 'Nil' rate of duty. He has also examined the difference between the erstwhile Chapter X procedure and procedure prescribed under CER, 2001 and observed that while in the case of Chapter X procedure, there was a provision for remission, whereas, in terms of procedure under CER, 2001, there is an exemption.

5. Learned Advocate has mainly argued that the issue is no longer res integra as in their own case, in respect of identical issue, periodical SCNs issued to their units as well as their sister units for the period from September, 2011 to October, 2015, where also the clearances were under Notification No.04/2006-CE, following the same procedure under CER, 2001 and demand was made as per Rule 6(3)(b) of CCR, the Tribunal has set aside the Orders. Therefore, when the similar issue has already been set aside by the Tribunal for earlier as well as later period, this appeal should also be allowed. Therefore, their goods, when cleared in terms of CER, 2001, as required under notification, it could not be deemed as exempted goods as it is essentially exempted in the hands of the recipient, who is entitled for

said exemption subject to the condition that recipient uses the said goods received duty-free for specified purpose. He has also relied on CBEC circular dt.21.06.2001. He has also relied on the judgment of Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd Vs UOI [2008 (223) ELT 149 (Raj.)], affirmed by Hon'ble Supreme Court as reported at [2014 (303) ELT 321 (SC)]. He has also relied on catena of other case laws in support that when the clearance is under erstwhile Chapter X procedure, which is more or less identical to CER, 2001, the goods are not to be treated as exempted goods qua the manufacture and for any non-compliance, the liability to pay duty is on the recipient who has procured the goods. By way of additional submission, he has submitted that even if they are covered within the purview of Rule 6 of CCR, they are not required to pay an amount equal to 10%/5% of the value of exempted goods in view of retrospective amendment vide Eighth Schedule to the Finance Act, 2010, whereby, Rule 6(7) to CCR, 2004 has been inserted retrospectively. He has also contested the issue on limitation.

6. Learned AR, on the other hand, reiterates the findings of the adjudicating authority in the impugned order.

7. Heard both sides and perused the records.

8. The short question for determination is whether clearance of goods in terms of CER, 2001 would amount to granting of exemption to the goods at the time of clearance from the factory of manufacturer or it would be considered as exemption in the hands of recipient of goods subject to compliance with its end use for specified purpose. We have perused the Notification No.04/2006-CE, which is an exemption notification issued under sub-section (1) of section 5A of the Central Excise Act, 1944. At S.No.32, it exempts the duty which is in excess of the amount calculated at the rate specified in the corresponding entry in column No.4. The rate provided in column No.4 is 'Nil'. Therefore, the entire duty would stand exempted in terms of this notification. This exemption is subject to condition No.2, which stipulates that "where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed". We have also

perused CER, 2001. These rules apply to manufacturer who intends to avail the benefit of the notification issued under sub-section (1) of section 5A granting exemption of duty to excisable goods when used for the purpose specified in that notification. A detailed procedure has been prescribed where the manufacturer who intends to receive subject goods for specified use at concessional rate of duty is required to make an application to the jurisdictional Assistant Commissioner and execute a general bond with surety or security. He is also required to follow certain procedure as regards receipt, accountal, use, etc., and in case where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of section 11A and section 11AB shall apply mutatis mutandis for effecting such recoveries.

9. Therefore, as far as this procedure is concerned, it is clear that this is an enabling provision for availing exemption by a manufacturer who intends to procure and use certain specified goods for an intended purpose and therefore, in case he is not able to prove that it has been used as such, he is responsible for paying the amount equal to duty to the extent not paid due to exemption availed in the hands of manufacturer of goods. Therefore, the exemption notification, which is subject to a condition, as prescribed in CER, 2001, essentially, is not an exemption notification for the manufacturer of goods, per se, but it is an exemption, which is availed by the recipient of goods and the liability to pay the duty for failure to comply with the condition of the notification is on the recipient. It is also noted that even when the goods are lost in transit, once cleared from the factory of the manufacturer, the liability to pay the duty equivalent to exempted goods is on recipient. Because of peculiar nature of this rule, while no demand of duty is made from the recipient of the said goods, as recipient cannot be deemed to be a manufacturer and therefore, duty cannot be demanded from the manufacturer as such, however, the rule itself provides that the same person would be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory and for the recovery of the same along with interest, the provisions of section 11A & 11AB of the

Central Excise Act, 1944 shall apply mutatis mutandis for effecting such recoveries.

10. Further, insofar various case laws relied upon by appellant including in their own case, vide Final Order dt.26.09.2016, learned Single Member, wherein the Bench has relied on the judgment in the case of Auerola Chemicals Ltd Vs CCE, Indore [2004 (175) ELT 148 (Tri-Del)], wherein, it was held that clearance of goods under Chapter X procedure against CT-2 certificate without payment of duty are not exempted goods. She has also relied on the judgment of Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd Vs UOI (supra). She has also relied on the decision of Coordinate Bench of the Tribunal in the case of CCE, Indore Vs SRF Ltd [2008 (223) ELT 508 (Tri-Del)], which was further upheld by the Apex Court reported at [2010 (255) ELT A13 (SC)], whereby, the appeal filed by the department was dismissed. She has also relied on the judgment in the case of Dharamsi Morarji Chemicals Co Ltd Vs CCE, Raigad [2010 (255) ELT 314 (Tri-Mum)]. Similarly, in the Final Order dt.22.12.2016 & Final Order dt.17.04.2018, in the appellant's own cases, learned Single Members of this Bench referred to the earlier Final Order dt.26.09.2016 and allowed the appeal in favour of the appellant and dismissed another appeal filed by the department respectively.

11. We, therefore, find that the Single Member Bench has already allowed the appeal relying on the ratio of the judgment of Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd Vs UOI (supra), where the issue was more of less identical and the Hon'ble High Court, inter alia, held as under:

> *"34.We are unable to read from the General Exemption No.66 that product of sulphuric acid by the manufacturer of sulphuric acid was exempted from the payment of whole of the duty or was subjected to nil rate of duty or vide under Tariff Act or under the Exemption. It was only on the clearance of the sulphuric acid for specific use to the manufacturer of the fertilizer the latter was entitled to receive the sulphuric acid at nil payment of duty on furnishing counter signed application and on furnishing surety/security to make the payment of Duty payable on sulphuric acid, if not utilized in manufacture of fertilizer. Therefore, it also cannot be said that the exemption or nil rate extended to the manufacturer of subject goods, which could at all be in contemplation of the manufacturer at the time of receipt of inputs when he became entitled to avail the Modvat credit and availed Modvat credit in respect of Duties paid thereon."*

12. We also note that even though the reference was in relation to Rule 57CC and exemption under General Exemption No.66, whereas, in the present appeal, it is Rule 6 of CCR and notification 04/2006, the fact remains that they are more or less identical inasmuch as they regulate usage of credit and exemption of excisable goods. Insofar Chapter X procedure and the procedure prescribed under CER, 2001 are concerned, they are more or less identical. Therefore, the ratio of Hon'ble High Court judgment, relied upon by the Bench in their own case, supra, is applicable in the present case also. Apart from that, in the case of SRF Ltd (supra) also, similar view was taken and the Revenue went on to appeal before the Supreme Court, which was dismissed. We also find that in the case of Dharamsi Morarji Chemicals Co Ltd Vs CCE, Raigad (supra), it was, inter alia, held that provision of Rule 6 of CCR, 2004 is not applicable, where the goods have been cleared against CT3 certificate to the fertilizer manufacturing unit in terms of notification 04/2006-CE dt.01.03.2006.

13. Thus, following the ratio of these relied upon judgments of Coordinate Benches, as also judgment in the case of Hindustan Zinc Ltd Vs UOI (supra), we find that when the sulphuric acid has been cleared to the fertilizer units, without payment of duty following the procedure under CER, 2001, such clearance would not tantamount to clearance of exempted goods, per se, in the hands of manufacturer of sulphuric acid and it would be an exempted product in the hands of the recipient, who shall be required to discharge the duty liability as prescribed in terms of bond and security read with provisions under CER, 2001, in respect of the said goods. In view of the same, the impugned order is not tenable and therefore, it is set aside.

14. Accordingly, appeal is allowed.

(Pronounced in the Open Court on 16.05.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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