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

Division Bench – Court No. – I

Excise Appeal No. 3528 of 2012

(Arising out of Order-in-Original No. 84/2012-C.Ex. dt.24.09.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

The Andhra Sugars Ltd
Venkatarayapuram, Tanuku,
West Godavari Dist., AP – 534 215

......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/30180/2025

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 Adjudicating Authority has, inter alia, confirmed the demand of Rs.51,41,704/- (+) Rs.52,763/- (+) Rs.39,310/-, in terms of Rule 6(3) and Rule 6(3)(ii) of Cenvat Credit Rules, 2004 (CCR) and also imposed penalty under section 11AC read with Rule 15(2) of CCR.

2. The issue, in brief, is that the appellants were manufacturing several excisable goods including sugar and molasses. Additionally, the appellant was also manufacturing fuel for rocket launching vehicles of Indian Space Research Organization (ISRO) described as Ultra Hydrazine (UH), Mono Methyle Hydrazine (MMH) & Hydroxy Terminated Poly Butadiene (HTPB) and cleared under Notification No.64/95-CE dt.16.03.1995 and Notification No.10/97-CE dt.01.03.1997 without payment of duty. Whereas, other

excisable goods cleared from the factory were dutiable. They have also availed benefit of Cenvat Credit on inputs and input services for manufacturing of dutiable goods except in respect of UH, MMH and HTPB cleared without payment of duty under exemption notifications and has claimed to have maintained separate accounts in respect of input as also input services as envisaged in Rule 6 of CCR.

3. The Department felt that they were engaged in manufacture of both dutiable and exempted goods viz., UH, MMH and HTPB and were availing common credit on certain input services like courier, rent-a-cab, telephone, transportation of gas by pipeline, etc., during the period February, 2005 to March, 2011 and allegedly were not maintaining separate accounts and hence liable to pay proportionate Cenvat credit under Rule 6(3A) or an amount equivalent to 10% in respect of HTPB cleared without payment of duty under Notification No.10/97-CE. For the period February, 2005 to December, 2009 demand was made under Rule 6(3A) of CCR. For subsequent period, demand was made under Rule 6(3) for reversal of proportionate credit.

4. On adjudication, apart from various submissions, the appellant, inter alia, submitted that none of the impugned input services were used in the manufacture of exempted goods viz., UH, MMH and HTPB and that they have maintained separate accounts for all the products manufactured by them as well as for inputs and input services as per plant/division. Insofar as natural gas received by them is concerned, it was used as fuel for manufacturing steam which was further used for generation of electricity and the electricity so produced would have been used for both dutiable and exempted goods, which is nothing but captive consumption and that there must be sale of exempted goods to attract the provisions of Rule 6 of CCR. Morevoer, fuel as such is excluded from the provision of Rule 6. They also argued that even if the departmental stand is correct, the quantum of duty demanded is not realistic and it is enough if the Cenvat credit taken is reversed. The Adjudicating Authority did not accept their explanation that they had maintained separate accounts for dutiable and exempted final products as no evidence was adduced and also doubted the claim that input services were not used in the manufacture of exempted products in view of non-production of any tangible evidence by the appellant.

5. Learned Advocate for the appellant is mainly contesting that the order passed by the Adjudicating Authority is bad in law as the same has been passed without appreciating the facts and the provisions of law. The appellant submits that they were maintaining separate account plant wise as they were manufacturing different items in different plants and therefore, they have availed Cenvat credit only on inputs and input services, which are clearly attributable to dutiable final products and that they have not taken any Cenvat credit on inputs or input services used in the manufacture of exempted goods. Therefore, the entire conclusion of the Adjudicating Authority is based on conjectures and surmises. Further, even if it is assumed without admitting that they have violated the provisions of Rule 6(1) & (2) of CCR, the respondent has wrongly confirmed demand of Rs.49,38,317/- being amount @ 10% of the value of HTPB, whereas, the proportionate Cenvat credit attributable will be only Rs.16,145/-. He has relied on various case laws in support of his contention.

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 in the given facts of the case, the department was right in demanding an amount under Rule 6 of CCR or reversal of proportionate credit in view of the fact that the appellants were admittedly clearing certain exempted goods along with certain dutiable goods from their factory or otherwise. On going through the SCN dt.05.03.2010, we find that the appellants are primarily engaged in manufacture of sugar but are also manufacturing certain specialized products which are cleared to ISRO in terms of Notification No.64/95-CE, being an exemption notification. The department's view is that since they have taken certain credit in respect of certain input services including services used by appellant for transportation of gas by pipeline used for generation of electricity and not maintained separate account, Rule 6(3) is invokable. The appellant's main contention is that they have separate plants and are maintaining separate records for production and clearance, etc., and the input services viz., courier, rent-a-cab and telephone services were

clearly not used for exempted goods and in fact, they have given explanation as under:

> *"(i) Courier – These services were required to send parcels/letters by the registered office of the Appellant to various clients, customers, etc., and the courier services were used exclusively for customers, clients in connection with dutiable goods only. If any letters or communications or correspondence had to be sent to ISRO the Appellant had to use only Government of India Postal services i.e., Reg. Post or Speed Post, etc. The Appellant did not use courier service in respect of ISRO activities.*
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> *(ii) Rent-a-Cab – This service is utilized by the officials of the Appellant's marketing department exclusively related to dutiable goods i.e., sugar and chemicals whenever they go out on camp to other places for conveyance from railway station or airport to guest house/hotels, etc. This service has nothing to do with exempted goods supplied to ISRO without payment of duty.*
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> *(iii) Telephone – It is submitted that no landline telephones were installed in the plant of UH, MMH or HTPB and no credit is taken in respect of telephone services used for the said activity."*

9. Insofar as the gas is concerned, their argument is that fuel is excluded from the provision of Rule 6(2) of CCR for the period prior to 01.04.2008 and it is very difficult to calculate and attribute the amount of electricity that might have been used in the plant within the factory for production of exempted goods. We find that Rule 6, as it existed prior to 01.03.2016 provided for not allowing any Cenvat credit on such quantity of inputs used in or in relation to manufacture of exempted goods or for provision of exempted services or input services used in or in relation to manufacture of exempted goods or for provision of exempted services except in the circumstances mentioned in sub-rule (2).

10. As per the provision of Rule 6(2), the appellants who are admittedly manufacturing both dutiable and exempted excisable goods were required to maintain separate record for receipt and use of input services. Apparently, the appellants have not been able to adduce any evidence that they have maintained any record for receipt and use of input services separately though they have claimed that they have not at all used the input services for manufacture of exempted goods. As per Rule 6(2), in the event of non-maintenance, the appellants will have the right to choose any one of the options governed by Rule 6(3)(i), (ii) and (iii). In this case, though claimed but they are not able to establish that they have maintained separate account for receipt and use of input services even though admittedly they are engaged in manufacture of both dutiable and exempted goods.

Therefore, they were required to follow the procedure under Rule 6(3). As per the provisions of Rule 6(3) of CCR post 01.04.2008, there is a provision for payment of an amount equivalent to Cenvat credit attributable to inputs and input services used in or in relation to manufacture of exempted goods subject to condition and procedure specified in Rule 6(3A). Whereas, prior to 01.04.2008, there was no such provision except for in terms of retrospective amendment in 2010, which provided for specialized procedure under Rule 6(7) for payment of amount equivalent to the credit attributable to exempted goods along with 24% interest before a specified date. In this case, they have clearly not availed of the said provision and thus, in terms of the extant rules, when there was no provision for reversal of Cenvat credit attributable for period prior to 01.04.2008, as such, then the only option left was to pay an amount at the specified rate indicated in the respective SCNs. However, for the period post 01.04.2008, the option is to be chosen by the manufacturer and it cannot be imposed on him by Department. Further, even if the procedure under Rule 6(3A) has not been followed in full, they can work out the credit attributable to said exempted goods, if any.

11. The appellant's reliance on the judgment of Hon'ble High Court in the case of Principal Commissioner, CGST, Ludhiana Vs Suraj Solvents & Vanaspati Industries [2023 (384) ELT 526 (P&H)], is distinguished as in that case the assessee could not apply because of pendency of proceedings in other forum, which is not the case here. Hence it is distinguished. In the case of Shree Rama Mutli Tech Ltd Vs UOI [2011 (267) ELT 153 (Guj)] again the manufacturer had not opted in terms of retrospective amendment brought in the Finance Act, 2010, but were otherwise presenting their remedy before the High Court. Thus, this is not applicable. The judgment in the case of CCE, Ahmedabad-II Vs Maize Products [2009 (234) ELT 431 (Guj)] is also distinguished as in this case, the Hon'ble High Court dismissed Revenue appeal against Tribunal as not having any substantial question of law. The issue was that the Tribunal in a given factual matrix allowed them to reverse the credit attributable even for the period prior to 2008. We are not in approval with said observation of Tribunal inasmuch as when there is no statutory provision to reverse the applicable credit prior to 2008, Tribunal, as a creature of statute, cannot allow relief which is not within the four walls of the statute itself. Some of the other judgments of Coordinate

Benches have either relied on the judgments of Hon'ble High Courts or the period is post 01.04.2008, when there is provision for reversal of proportionate credit attributable to exempted goods.

12. Thus, in view of the statutory provisions, we find that for the period prior to 01.04.2008, the appellant would be required to pay an amount as indicated in the respective SCNs. However, for the period post 01.04.2008, they will be at liberty to pay an amount equivalent to the Cenvat credit attributable to the exempted goods. In case no credit is found attributable to the exempted goods, then no amount shall be liable to be payable. As far as the issue of limitation is concerned, we find that the Adjudicating Authority has considered their submission and has held that in the facts of the case, it is rightly invokable. We find that in this issue of reversal of credit, options under Rule 6, etc., were subject matter of differing interpretations during material time and even retrospective amendment was made to allow certain relief for period prior to 2008. Thus, the issue is interpretative in nature and there is no other strong and cogent ground for invoking extended period, hence, extended period cannot be invoked.

13. Thus, appeal is remanded to Original Adjudicating Authority to redetermine the demand based on observations in foregoing paras and uphold the demand only to the extent of normal period in all SCNs. Further, penalty under Rule 15(2) is set aside as there is no evidence that credit has been taken or utilized wrongly by reasons of fraud, willful misstatement, suppression of facts, etc. In fact, the Adjudicating Authority has already held that since, extended period is invokable, consequential penalties are automatically applicable, which is not tenable when no such evidence has been adduced either for invoking extended period or for imposing penalty.

14. Appeal is partly allowed by way of remand.

(Pronounced in the Open Court on 16.05.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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