CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Regional Bench - Court No. – I

Excise Appeal No. 30264 of 2017
(Arising out of Order-in-Original No.KKD-EXCUS-COM-18/16-17 dt.21.10.2016 passed by Principal Commissioner of Customs, Central Excise & Service Tax, Kakinada)

M/s Mylan Laboratories Ltd
Unit-9, Plot No.5, J N Pharma City, Tadi Village,
Parwada Mandal, Visakhapatnam, AP – 531 021 **......Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Visakhapatnam - I
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

Appearance:-
Shri Ch. Sumanth, Advocate for the Appellant.
Shri K. Raji Reddy, AR for the Respondent.

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

FINAL ORDER No. A/30283/2025

Date of Hearing: 11.08.2025
Date of Decision: 11.08.2025

[Order per: A.K. JYOTISHI]

M/s Mylan Laboratories Ltd (hereinafter referred to as the appellant) are in appeal against Order-in-Original dt.21.10.2016, whereby, two show cause notices involving period from April, 2014 to November, 2015 have been decided by the adjudicating authority confirming the demand of Rs.34,35,43,424/- along with interest and penalty. The issue involved is reversal of credit under Rule 6(3)(i) of Cenvat Credit Rules, 2004 (CCR) on exempted goods cleared to SEZ and 100% EOU.

2. The issue, in brief, is that the appellants are engaged in the business of manufacturing bulk drugs and drug intermediates and are engaged in manufacturing both dutiable and exempted products. Admittedly, the appellants have not availed credit on inputs used in the manufacture of exempted goods cleared domestically or exported and had also not availed credit on input services used by them during the manufacture of dutiable and exempted products as the same was availed at Input Service Distributor (ISD). The appellants were following particular procedure where they were

first not taking credit and only based on the amount of input actually going into the dutiable final product, the credits were being taken. For computing dutiable final product, they are also taking into consideration the clearances made to SEZ and EOU, even though they are otherwise exempted under specific notification.

3. Learned Advocate for the appellant has primarily submitted that the issue is no longer res integra as in their own case, insofar as the issue of the practice being followed by them of taking credit only in respect of that amount of credit which has gone into production of dutiable goods, has already been decided by this Bench in their own case and some of the other group company cases. He is relying on the following case laws:

a) Mylan Laboratories Ltd Vs CCT, Visakhapatnam [2019 (11) TMI 952 – CESTAT Hyd]
b) Mylan Laboratories Ltd Vs CCE & ST, Hyderabad-I [2018 (8) TMI 1440]
c) Astrix Laboratories Ltd Vs CCE & ST, Hyderabad-I [2019 (5) TMI 1344 – CESTAT Hyd]
d) Astrix Laboratories Ltd Vs CCT, Visakhapatnam [2020 (2) TMI 196 – CESTAT Hyd]

4. Further, he pointed out that in the case of Astrix Laboratories Ltd Vs CCE & ST, Hyderabad-I (supra), the department had gone to Hon'ble Telangana High Court against the said order, where the Hon'ble High Court has rejected the appeal after going through the facts of the case and the order of the Tribunal. The Hon'ble High Court had, inter alia, taken into consideration that Tribunal, in the course of passing the impugned order, has taken into account the judgement passed in the case of assesse itself by the very same Tribunal and moreover, the said decision also having been passed relying on the aforesaid judicial precedents of various Tribunals and Hon'ble High Court of Delhi and therefore, they did not find any substantial question of law made out by the Revenue.

5. Insofar as the issue whether the clearances to SEZ and EOU are to be reckoned as dutiable clearances despite there being exempted, the issue was before the Bench in the case of Mylan Laboratories Ltd Vs CCE, Visakhapatnam [2023 (9) TMI 1060 – CESTAT Hyd], wherein, in the

identical factual matrix, the Tribunal allowed the appeal of appellant. In other words, the provisions of Rule 6(6)(i) allows them to take credit even in respect of said clearances despite there being otherwise exempted. Therefore, both these issues are no longer res integra and covered in appellant's own cases.

6. Learned AR has reiterated the impugned order passed by the adjudicating authority.

7. Heard both sides and perused the records.

8. We find that in this case, on identical issue in respect of appellants themselves, the matter has already been decided and the practice being followed for taking credit only in respect of inputs going into the dutiable products has been upheld. Therefore, we do not find any fault with the practice being adopted, as held in earlier order, cited supra. Insofar as the issue of reversal of credit under Rule 6(3)(i) in respect of clearances of exempted goods made to SEZ and EOU, we find that the provisions are quite clear, inasmuch as Rule 6(6) of CCR, 2004, clearly provides that in case of removal of excisable goods without payment of duty to certain categories including SEZ and EOU, the provisions of sub-Rule (1), (2), (3) & (4) shall not be applicable. In other words, the provisions of Rule 6(3) would not be applicable by virtue of this provision for such clearances. Therefore, there cannot be a demand for reversal in accordance with provisions under Rule 6(3) in respect of exempted goods, when they are cleared to specified categories including SEZ & EOU. We, therefore, following the judgment, cited supra, on both the issues, find that the order of the adjudicating authority is not tenable and legal and accordingly, is liable to be set aside. We, accordingly, set aside the impugned order.

8. Appeal allowed.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda