CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 30285 of 2020

(Arising out of **Order-in-Appeal** No.GUN-EXCUS-000-APP- 107 & 108-19-20 dated 27.12.2019 passed by Commissioner of GST & Customs (Appeals), Guntur)

The Andhra Sugars Ltd., .. **APPELLANT**
Kovvur,
West Godavari District,
Andhra Pradesh – 534 350.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Guntur - GST
C.R. Buildings,
Kannavarithota,
Guntur
Andhra Pradesh – 522 004.

AND

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APPEARANCE:
Shri B. Venu Gopal, Advocate for the Appellant.
Shri Dr. T.V. Rajesh, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30386-30387/2026

Date of Hearing: 09.06.2026
Date of Decision: 22.07.2026

[ORDER PER: ANGAD PRASAD]

These two appeals arise out of the common Order-in-Appeal Nos. GUN-EXCUS-000-APP- 107 & 108-19-20 dated 27.12.2019 passed by the Commissioner (Appeals), Guntur, whereby the Appellate Authority reversed the Order-in-Original passed by the Adjudicating Authority and confirmed the demand raised under Rule 6(3) of the Cenvat Credit Rules, 2004.

2. The first appeal relates to the period from November 2015 to September 2016, while the second appeal pertains to October 2016 to June 2017.

3. The fact in brief is that the appellant is engaged in the manufacture of Sulphuric Acid falling under Chapter 28 of the Central Excise Tariff Act 1985. During the relevant period, the appellant procured Sulphur on payment of duty and availed Cenvat Credit of duty paid on inputs and service tax paid on input services such as GTA, handling and other eligible services.

4. Apart from normal clearances on payment of central excise duty, the appellant also cleared Sulphuric Acid to fertilizer manufacturers without payment of duty under Notification No. 12/2012-CE dated 17.03.2012 by following the procedure prescribed under the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001.

5. The Department entertained the view that such clearance constituted clearance of "exempted goods" within the meaning of Rule 2(d) of the Cenvat Credit Rules, 2004 and that since the appellant had neither maintained separate accounts under Rule 6(2) nor exercised the option prescribed under Rule 6(3A), the appellant was liable to pay an amount under Rule 6(3).

6. Accordingly, Show Cause Notices dated 31.05.2017 and 02.11.2018 were issued demanding Rs. 5,02,570/- and Rs. 5,43,876/- respectively together with interest and penalty.

7. After considering the replies and hearing the parties, the Original Adjudicating Authority dropped both the proceedings holding that Rule 6 was not attracted.

8. The Revenue preferred appeals before the Commissioner (Appeals). The Commissioner (Appeals), by the impugned common order, allowed the Departmental appeals and confirmed the liability under Rule 6(3), giving rise to the present appeals.

9. Learned Counsel for the appellants submits that the entire foundation of the impugned order proceeds on an erroneous assumption that Sulphuric Acid cleared under Notification No. 12/2012-CE becomes "exempted goods" within the meaning of Rule 2(d) of the CCR.

10. It is argued that Notification No. 12/2012-CE merely provides a concessional mode of clearance subject to fulfilment of stringent statutory conditions prescribed under the 2001 Rules. The exemption is not unconditional nor attached to the goods themselves. The liability continues to subsist and stands shifted to the recipient in the event of breach of any condition.

11. Learned Counsel further submits that the appellant manufactures Sulphuric Acid on payment of central excise duty and clears substantial quantities on payment of duty. Therefore Sulphuric Acid cannot be regarded as an inherently exempt commodity.

12. It is further submitted that identical disputes concering the appellant itself have repeatedly travelled to this Tribunal for earlier period as well as subsequent periods and every time the Tribunal has held that Rule 6 has no application.

13. Attention is invited to the following Final Orders:

i. M/s The Andhra Sugars Ltd., Vs CCE, Guntur [Final Order No. A/30944-30949/2016 dated 26.09.2016]

ii. M/s The Andhra Sugars Ltd., Vs CC, CE & ST, Guntur [Final Order No. A/31516/2016 dated 22.12.2016]

iii. CCT, Guntur-GST Vs M/s The Andhra Sugars Ltd., [Final Order No. A/30506/2018 dated 17.04.2018]

iv. M/s The Andhra Sugars Ltd., Vs CCT, Guntur-GST [Final Order No. A/30179/2025 dated 16.05.2025]

14. Wherein, identical demands were either set aside or departmental appeals dismissed. According to the Learned Counsel, judicial discipline requires the present Bench to follow those binding decisions, particularly when the issue, the assesse and the notification remain identical.

15. Learned Counsel further argues that the Commissioner (Appeals) has ignored the binding judgment of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd., supra, affirmed by the Hon'ble Supreme Court, wherein, it has been held that goods cleared under Chapter X, procedure cannot be treated as exempted goods merely because duty is not paid at the stage of clearance. It is also contended that the notification merely grants remission of duty subject to fulfilment of statutory conditions and does not render the goods exempt.

16. Learned Counsel further submits that the Commissioner (Appeals) failed to appreciate CBEC Circular No. F.No. 354/66/2001-TRU explaining the legal scheme under the 2001 Rules.

17. It is finally argued that even otherwise the issue is purely interpretational and, therefore, extended period and consequential penalties are wholly unsustainable.

18. Learned Authorized Representative reiterates the reasoning contained in the impugned order. It is submitted that the Rule 2(d) of the CCR defines exempted goods to include goods chargeable to nil rate of duty since SA was admittedly cleared without payment of duty under Notification No. 12/2012-CE, such goods clearly fall within the definition of exempted goods.

19. It is argued that the appellant admittedly availed common Cevat Credit and simultaneously manufactured dutiable as well as exempted goods without maintaining separate accounts. Therefore, the statutory consequences under Rule 6 automatically follows.

20. Learned AR submits that the appellant consciously opted for exemption under Notification No. 12/2012-CE and cannot subsequently contend that such clearances are not exempted goods. Reliance is placed upon the judgments of the Hon'ble Supreme Court in the case of Collector of Central Excise Vs Parle Exports (P) Ltd., [1988 (11) TMI 108 – SC] and M/s Oswal Agro Mills Ltd., Vs Collector of CE [1993 (4) TMI 73 - SC] to contend that exemption notifications are to be interpreted strictly according to their language.

21. It is further argued that Tribunal's Final Order No. A/30179/2025 dated 16.05.2025 has already been challenged before the Hon'ble High Court of

Andhra Pradesh and notice has been issued. Accordingly, according to the Revenue, the issue has not attained finality. Learned AR therefore, prays that the impugned order deserves to be upheld.

22. Having heard the Learned Counsel for the appellants and the Learned AR for the Revenue and after carefully perusing the records, the following issues arise for determination:

(i) Whether Sulphuric Acid cleared without payment of duty under Notification No. 12/2012-CE dated 17.03.2012 by following the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 can be treated as "exempted goods" within the meaning of Rule 2(d) of the CCR, 2004 ?

(ii) Whether the appellant was required to maintain separate accounts or pay an amount under Rule 6(3) of the CCR, 2004 ?

(iii) Whether the impugned Order-in-Appeal is sustainable in view of the earlier Final Orders passed by this Tribunal in the appellant's own case on identical facts ?

iv) Whether the Revenue is justified in contending that the earlier Final Order dated 16.05.2025 should not be followed merely because the same has been challenged before the Hon'ble High Court ?

v) Whether the demands are sustainable on limitation and penalty ?

23. At the outset, it is noticed that the factual matrix is not in dispute. There is no allegation that the appellant has clandestinely removed any goods or wrongly availed any Cenvat Credit. It is also not disputed that Sulphuric Acid has been manufactured in the appellant's factory and that part of the production was cleared on payment of Central Excise duty while

another part was supplied to fertilizer manufacturers under Notification No. 12/2012-CE after following the statutory procedure prescribed under Rules of 2001. Thus, the controversy is purely one of interpretation of Rule 6 of the CCR, 2004.

24. The principal reasoning adopted by the Commissioner (Appeals) is that Sulphuric Acid cleared under Notification No. 12/2012-CE attracts “Nil” rate of duty and therefore falls within Rule 2(d) defining exempted goods. In our considered opinion, such reasoning is legally unsustainable. Rule 2(d) cannot be interpreted in isolation. The Notification itself has to be read harmoniously with Central Excise Act, the Cenvat Credit Rules and the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001.

25. A careful reading of Notification No. 12/2012-CE shows that the exemption is not unconditional. The exemption is available only when the recipient manufacturer complies with the elaborate statutory procedure prescribed under the Rules of 2001. Thus, exemption is transaction-specific and conditional. The goods themselves do not become permanently exempt merely because, in a particular transaction, they are cleared under the notification. The same Sulphuric Acid manufactured by the appellant is admittedly cleared on payment of duty to numerous buyers. Therefore, the commodity itself continues to remain dutiable. Only specified clearances made under statutory safeguards are permitted without payment of duty. Hence, the Commissioner (Appeals), in our opinion committed an error in treating the goods themselves as exempted goods.

26. The Rules of 2001 constitute a complete statutory code. They prescribed procurement certificate; verification by jurisdictional authorities’

execution of bond; maintenance of records; end-use verification; and recovery of mechanism on case of diversion. The liability to safeguard Revenue does not disappear. It merely shifts to the recipient manufacturer if statutory conditions are violated. This statutory mechanism clearly demonstrates that the exemption is conditional and purpose-oriented. Therefore, such removals cannot be equated with ordinary exempted clearance contemplated under Rule 6.

27. The Learned Counsel has rightly relied upon the judgment of the Hon'ble Rajastan High Court in the case of Hindustan Zinc Ltd., Vs Union of India reported in [2008 (223) ELT 149 (Raj)], which stands affirmed by the Hon'ble Supreme Court in [2014 (303) ELT 321 (SC)]. The ratio laid down therein is that the goods cleared under the erstwhile chapter, procedure cannot automatically be regarded as exempted goods, merely because no duty is paid at the stage of clearance. The High Court observed that where exemption depends upon fulfilment of statutory conditions and liability survives in the event of breach, such clearances do not attract Rule 6. The Hon'ble Supreme Court affirmed the said judgment, thereby lending finality to the legal principle. The legal proposition emerging from Hindustan Zinc Ltd., squarely applies to the present Notification No. 12/2012-CE substantially continues the same legislative scheme which earlier operated through the Chapter X procedure.

28. An equally important aspect cannot be ignored. The appellant has placed on record four Final Orders passed by this Tribunal involving the appellants itself. The periods differ. The Notification is the same. The manufacturing process is identical. The legal issues are identical. In each of those Final Orders, the Tribunal has consistently held that Rule 6 has no

application. Judicial consistency is one of the fundamental principles governing administration of justice. Unless an earlier decision is distinguished on facts or over ruled by a superior forum, a Co-ordinate Bench is expected to follow the same. No distinguishing feature has been pointed out by the Revenue. On the contrary, the Revenue itself admits that the facts are identical. Therefore, judicial discipline requires us to follow the earlier decisions in the appellant’s own case.

29. The Revenue has argued that Final Order No. A/30179/2025 dated 16.05.2025 has been challenged before the Hon’ble High Court of Andhra Pradesh and notice has been issued. We are unable to accept the said contention. It is well settled that mere filing of an appeal does not wipe out or suspend the operation of the judgment appealed against. Unless the superior Court grants a stay or specifically suspends the operation of the judgment, the decision continues to remain binding between the parties as well as upon the Co-ordinate Benches. The Revenue has not produced any order of stay granted by the Hon’ble High Court. Therefore, the Final Order dated 16.05.2025 continues to hold the field and deserves to be followed. Accordingly, the mere pendency of an appeal cannot constitute a valid ground to ignore a binding precedent.

30. The Learned AR has relied upon the judgment of Hon’ble Supreme Court in the case of Parle Export (P) Ltd., and Oswal Agro Mills Ltd., supra, to contend that exemption notifications must be interpreted strictly and nothing can be added to or subtracted from the language emplyed by the Legislature. There can be no quarrel with the proposition laid down in the aforesaid judgments. The principle that an exemption notification must receive strict construction is well settled. However, the issue before us is not

the interpretation of the scope of Notification No. 12/2012-CE nor is there any dispute regarding the appellant's eligibility to clear Sulphuric Acid under the said Notification. The Department itself accepts that the appellant has fulfilled the prescribed conditions and that the clearances were rightly made under the Notification. The real controversy is whether such conditional clearances can automatically be regarded as manufacture and clearances of "exempted goods" so as to attract Rule 6 of the CCR 2004. Therefore, the judgment in Parle Export (P) Ltd., and Oswal Agro Mills Ltd., supra, deals with an entirely different legal issue and do not answer the question arising in the present appeals.

31. In fact, once the benefit of the notification itself is accepted, the only issue surviving is the legal consequence under Rule 6 of the CCR, 2004. The question stands concluded by the judgment relied upon by the appellant, particularly Hindustan Zinc Ltd, supra, which specifically examines the applicability of Rule 6 in the context of conditional duty-free removals. Accordingly, the reliance placed by the Revenue upon the Parle Export (P) Ltd., and Oswal Agro Mills Ltd., supra, is misplaced.

32. Rule 6 of the CCR, 2004 seeks to ensure that common Cenvat Credit attributable to exempted goods is either segregated or proportionately reversed. The Legislative intent is to prevent a manufacturer from enjoying credit relatable to goods on which no duty is intended to be collected. However, the present statutory scheme operates differently.

33. Sulphuric Acid manufactured by the appellant is admittedly a dutiable excisable product. The appellant clears substantial quantities on payment of duty and only specified clearances are permitted without payment of duty to fertilizer manufacturers, subject to statutory conditions prescribed under the

Rules of 2001. Such clearances cannot be equated with manufacture of inherently exempted goods. The obligation to ensure proper utilization of the goods continues throughout the statutory chain. If the recipient fails to satisfy the prescribed conditions, the duty becomes recoverable in accordance with the law. Thus, the exemption is conditional, purpose – specific and procedural. It does not alter the intrinsic dutiable character of the goods. Consequently, the mechanical application of Rule 6 adopted by the Commissioner (Appeals) overlooks the Legislative Scheme governing such removals.

34. Another second circumstance is that this Tribunal has constantly decided the identical issues in favour of the appellant for earlier as well as subsequent period. The Final Orders dated 26.09.2016, 22.12.2016, 17.04.2015 and 16.05.2025 all relates to the appellant's own manufacturing activity involving the same product, the same notification and substantially identical facts. The Revenue has not pointed out any statutory amendment brought into force during the relevant period which would justify taking a different view. It is well settled that certainity and consistency constitutes an essential feature of judicial discipline. Where identical facts arise between the same parties and earlier decisions have attained operative force, a Co-ordinate Bench should ordinarily follow the earlier view unless there exist compelling reasons for reference to a Larger Bench or there is a contrary judgment of a Superior Court. Neither situation exists in the present case. Therefore, judicial discipline also requires that the earlier Final Orders be followed.

35. Even assuming, for the sake of argument that Rule 6 could be invoked, the invocation of the extended period of limitation would still not be

sustainable. The records clearly disclose that the appellant had regularly filed ER-1 returns indicating manufacture and clearance of Sulphuric Acid. The clearance under Notification No. 12/2012-CE were effected through the statutory procedure prescribed under the Rules of 2001. The Department was fully aware of the nature of the clearances and had access to all the relevant records. The issue involved is purely interpretational and has itself been the subject matter of repeated litigation between the parties. While divergent judicial views exist on interpretation of statutory provisions, allegations of suppression of facts or willful misstatement cannot ordinarily be sustained. The conduct of the appellant does not disclose any deliberate attempt to evade payment of duty. On the contrary, the appellant followed the prescribed statutory procedure and discloses all relevant particulars in the statutory returns. In these circumstances, the ingredients necessary for invoking the extended period under the proviso to the applicable limitation provisions are conspicously absent. Therefore, the demands are liable to fail on the ground of limitation as well.

36. Since the principal demand itself is not sustainable, the consequential demands of interest and penalty cannot survive independently. Even otherwise, in a matter involving interpretation of Rule 6 and conditional exemption notifications, imposition of penalty would be wholly unwarranted in the absence of fraud, collusion, willful misstatement or suppression of material facts. Accordingly, the demand of interest and penalty are also liable to be set aside.

37. In view of the above discussions, we record our conclusions as follows:

a) Accordingly, we hold that Sulphuric Acid cleared under the Notification No. 12/2012-CE by following the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 cannot, in the facts of the present case, be treated as "exempted goods" so as to attract Rule 6 of CCR, 2004.

b) The impugned order proceeds on an erroneous interpretation of Rule 2(d) and Rule 6 of the CCR and is therefore not sustainable.

c) The issue is also squarely covered by the earlier decisions of the Tribunal rendered in the appellant's own case, which continue to hold the field.

d) The invocation of extended period of limitation is not sustainable.

38. Consequential demands of Cenvat Credit reversal, interest and penalties cannot survive.

39. Therefore, impugned order dated 27.12.2019 is set aside and appeals filed by the appellants are allowed with consequential relief, if any, in accordance with the law.

(Pronounced in the open court on 22.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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