**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA**

**Ex.Appeal No.202/10**

(Arising out of Order-in-Original No.03/Commr./CH-21/2009-10 dated 31.12.2009 passed by the Commissioner of Central Excise & Service Tax, Guwahati)

M/s Kuber Products

Applicant (s)/Appellant (s)

**Vs.**

CCEx., Guwahati

Respondent (s)

**Appearance**:

Shri P. D. Mukherjee, Advocate for the Appellants(s)
Shri S. Mukhopadhyay, Supdt. (AR) for the Revenue

**CORAM:**

**HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)**

Date of Hearing : 30.10.2018
Date of Decision : 30.10.2018

ORDER NO. FO/A/76865/2018

**Per Bench :**

The present appeal challenges the Order-in-Original No.03/Commr./CH-21/2009-10 dated 31.12.2009.

2. The appellant is engaged in the manufacture of pan masala & scented supari in their factory situated at Guwahati. The dispute covers the period from 23.03.2006 to 30.06.2007. During the said period, the appellant cleared the scented supari manufactured by them with Retail Sales Price (RSP) not exceeding 50 paisa per package at "nil" rate of duty. At the same time, the same goods with RSP more

than 50 paisa were cleared on payment of applicable excise duty. These rates are specified in Notification No.25/2006-CE dated 20.03.2006. During the period under dispute, the appellant was also availing cenvat credit on various goods including packing materials. The credit on such packing materials was availed, but such packing materials were used for both the dutiable as well as exempted goods. The Department was of the view that in terms of Rule 6 (3) of Cenvat Credit Rules, 2004, the appellant was required to pay an amount at the rate of 10% of the value of the exempted goods cleared. On this basis, show-cause notice dated 16.05.2008 was issued proposing to demand amount of Rs.59,52,370/- along with interest. The issue was finalized by issue of impugned order in which not only the duty demand was upheld with interest, but penalty of equal amount was also imposed. This order has been challenged in the present appeal.

3. In this connection, we have heard Shri P. D. Mukherjee, ld.Advocate for the appellant as well as Shri S.Mukhopadhyay, ld.D.R. for the Revenue.

4. The ld.Advocate for the appellant submitted that subsequent to issue of show-cause notice, the Department undertook an exercise to determine the correct amount of Cenvat Credit availed on the packing materials during the period under dispute. This amount was quantified to Rs.17,67,800/-. Cenvat Credit Rules were amended subsequently to give an option to the assessee to make payment under Rule 6 (3) on proportionate basis. The Assessees were allowed to make payment of the Cenvat Credit attributable to the inputs used in the manufacture

of exempted products. Subsequently, vide the Finance Act, 2010, an option was given to the assessee through Section 73 of the Act to finalize the dispute during the period 10.09.2004 upto 31st March, 2008. During the retrospective amendment carried out in Section 73 of the Finance Act, 2010, the benefit of proportionate reversal of the Cenvat Credit was made available as one time measure subject to payment of interest at the rate of 24%.

5. The ld.Advocate further submitted that such amendments were made in the Statute after filing of the appeal in the present case. He further submitted that the amount of cenvat credit attributable to the inputs used in the manufacture of exempted scented supari, which are RSP 50 paisa, worked out to Rs.3,89,002/-. Such amount has already been reversed by the appellant on 27.11.2008. Finally, he submitted that the amount already reversed would be sufficient to cover the demand arrived on the basis of the retrospective amendment. Hence, he submitted that there was no justification for demand of Rs.59.52 lakhs.

6. The ld.D.R. has fairly conceded that the Cenvat Credit Rules have been amended through Section 73 of the Finance Act, 2010. The present dispute would be covered within the window made available to the assessee through retrospective amendment. Further he submitted that the quantification adopted by the assessee as attributable to the Cenvat Credit of the exempted goods, has not been supported any documentary evidence and Certificates from Cost Accountant or Chartered Accountant in terms of amendment carried out in Rule 6 (3)

of Cenvat Credit Rules, 2004. He further submitted that the appellant will be liable to pay the interest also at the rate of 24% per Annum in terms of the amended provisions.

7. The ld.D.R. futher relied upon the decision of the Hon'ble Madras High Court in the case of Commissioner of Central Excise, Salem I Vs. Burn Standard Co. Ltd. reported in 2013 (294) ELT 389 (Mad.). The Hon'ble High Court was of the opinion that for such re-quantification as per retrospective amendment of the Finance Act, 2010, the assesse will be entitled to produce such Cost Accountant Certificate even after the lapse of six months time made available by the Finance Act, 2010.

8. Heard both sides and perused the records.

9. During the period under dispute, the appellant has manufactured and cleared among other things, scented supari by availing the benefit of Notification No.25/2006-CE dated 20.03.2006. This Notification extended the benefit of nil rate of duty for the goods of RSP not exceeding 50 paisa. Other goods will be liable at prescribed rates of excise duty. This had led to the situation in which Cenvat Credit has been availed on packing materials used commonly for both types of scented supari. In terms of provisions of Rule 6 (3), the appellant will have the liability of paying amount at the rate of 10% of the value of exempted products. The provisions have been amended subsequent to the period of dispute giving an option to the assessee to reverse the cenvat credit attributable only to the exempted products. This option was also extended to the period prior to such amendment through Section 73 of the Finance Act, 2010. After considering the period

specified, we note that the present dispute was relating to date specified in such Section.

10. It has been submitted on behalf of the appellant that the demand for an amount of Rs.59.52 lakhs have been made unfairly on the appellants. The verification carried out by the Department has determined that the total Cenvat Credit availed on the packing materials is only to the extent of Rs.17,67,800/- during the material period. It has further been submitted that the amount attributable to the exempted scented supari was only to the extent of Rs.3,89,002/-.

11. While observing that the dispute can be settled in the light of the amended provisions of Rule 6 (3), we note that the computation of the amount liable to be paid as claimed by the appellant, has not been verified by the Department. In terms of amended provisions of Rule 6 (3), the appellant is required to support the claim of such amount with a Certificate from the Cost Accountant/Chartered Accountant. We appreciate that the appellant did not get an opportunity to provide such Certificate from the Cost Accountant. In terms of the decision of the Hon'ble Madras High Court cited by the Revenue, we are of the view that the appellant is to be given an opportunity to make such claim before the original adjudicating authority duly supported by the Cost Accountant/Chartered Accountant's Certificate.

12. In the result, the impugned order is set aside and the matter is remanded to the adjudicating authority for denovo decision after

considering the claim of the appellant if duly supported by the Certificate.

13. Appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

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| Sd/ | Sd/ |
| **(P.K.Choudhary)** | **(V.Padmanabhan)** |
| **Member (Judicial)** | **Member (Technical)** |

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