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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77299 of 2018

(Arising out of Order-in-Appeal No.112/KA-1/2018 dated 21.03.2018 passed by Commissioner of Central Tax, Kolkata Audit-I, CGST & CX, Commissionerate, Kolkata.)

M/s. Xpro India Limited
(Biax Division, Barjora Unit, Barjora-Mejia Road,
P.O.Ghutgoria, Tehsil: Barjora, Dist: Bankura, W.B.-700202.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road,, Dwarkanathpur,
West Bengal, 731204.)

<u>APPEARANCE</u>

Shri Rahul Tangari, Advocate & Ms.Shreya Mundra, Chartered Accountant for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

<u>FINAL ORDER NO. 77060/2019</u>

DATE OF HEARING : 13 September 2019
DATE OF DECISION : 13 September 2019

P.K.CHOUDHARY :

The issue in dispute is that demand of an amount equivalent to specified percentage (10%/6%/5%, as in force during the relevant periods) of the sale price of the exempted Reprocessed Polypropylene Granules (RPG) under Rule 6(3)(b)/Rule 6(3)(i) of the Cenvat Credit Rules, 2004, when the Company has not availed any Cenvat credit on inputs used in manufacture of RPG and credit attributable to input services has already been reversed.

2. Facts of the case in brief are that the company is engaged in the manufacture of Biaxially Oriented Polypropylene Films (in short 'BOPP Films'). The primary raw materials required for manufacture thereof is PP Granules. During the course of manufacture of BOPP Films, waste and scrap is generated. The major quantity of waste generated is captively consumed by the company in the manufacture of Reprocessed Granules/RPG, which is exempt from excise duty under Notification No.6/2003-CE dated 01.03.2003 as amended vide Notification No.04/2006-CE dated 01.03.2006. The company discharged applicable Central Excise duty with respect to the waste and scrap material used in the course of manufacturing RPG. However, the company does not take CENVAT credit of the duty so paid on the waste and scrap material used in manufacturing RPG. In addition to the use of the waste/scrap as a major input for the manufacture of the RPG, the company does not use any other input or consumables. However, the company uses Lubricants for maintenance of the machinery used in the BOPP Plant. The company does not avail credit on any of the inputs used in or in relation to the manufacture of the exempted RPG. The lubricants on which credit is availed is not used in the RPG plant, hence cannot be considered as a common input. In respect of the small quantity of lubricants used in the RPG plant, no credit is availed by the company based on internal consumption records. In addition to the availment of credit on various inputs, the company also avails credit on various input services which are used in or in relation to the manufacture of the dutiable final products. The company however, does not avail credit on any input services exclusively used in the RPG plant.

3. The learned Advocate appearing on behalf of the appellant submits that since duty has already been discharged on the intermediate waste/scrap and no credit taken, hence, 10%/6%/5% under Rule 6 is not payable. It is submitted that since the company has already discharged duty on the intermediate waste and scrap captively consumed in the manufacture of exempted RPG, treating it as a final product, there remains no further requirement of payment of 10% / 6%

/ 5% duty on the exempted RPG. It is submitted that once the duty is discharged in the intermediate stage and no further credit is availed in the subsequent stages of manufacture of RPG, there is no application of Rule 6 of the CCR. Reliance in this regard is placed on the judgment in the case of Texmo Industries Vs. CCE, Coimbatore reported in 2007 (208) ELT 338 (LB). Further reliance is also placed on the judgment in the case of Tata Chemicals Ltd. vs. CCE, Haldia [2007 (214) ELT 95] wherein while following the aforesaid decision, the Tribunal directed for the payment of duty on the intermediate product as against the payment of 10% on the exempted final product. It is submitted that the decision of the Tribunal in the case of Tata Chemicals has been affirmed recently by the Hon'ble Calcutta High Court in CCE, Haldia Commissionerate Vs. Tata Chemicals, Haldia [2019(7) TMI 785].

4. It is further submitted that for the manufacture of the RPG, the inputs used by the company are clearly identifiable and no credit has been availed on the same. Hence, there is no question of treating the lubricants as a common input and consequently Rule 6 has no application in the present case. The company further submits that in respect of the input services on which credit is availed, they are mainly attributable to the dutiable final product viz. BOPP film. It is further submitted that there are no input services which are exclusively used in the manufacture of the RPG. Consequently, the provisions of Rule 6(3)(b)/Rule 6(3)(i) are not applicable in the instant case.

5. Learned Authorized Representative appearing on behalf of the respondent Revenue contends that the company has not maintained any separate account of common inputs and input service credit which was availed and utilized by them for manufacture of dutiable and exempted goods as required under the provision of Rule 6(2) of the Rules. Therefore, the company is required to pay an amount of 10% / 6% of the value of the goods under Rule 6(3)(b) / Rule 6(3)(i) of the Rules for clearing the exempted RPG during the period in dispute.

6. Heard both sides and perused the appeal records.

7. I find that taking into account the aforesaid provisions of Rule 6, the company submits that in the present case, since it has undisputedly and admittedly paid duty on the intermediate waste/scrap emerging during the manufacture of the BOPP film, there is no question of application of Rule 6. In other words, PP granules are used in the manufacture of dutiable goods i.e. BOPP film and waste/scrap. Since both the goods manufactured using PP granules are dutiable in nature, Rule 6 of the Rules is not applicable in the case of the company. Hence, the question of demanding duty to the extent of 10% / 6% / 5% of the value exempted RPG will not arise.

8. I also find that that since for the small quantity of lubricants used in the RPG plant, no credit is availed by the company based on internal consumption records, there is no requirement to pay duty on the same under Rule 6 of the Rules by the company. The department has failed to take into consideration this interpretation of Rule 6 and the demand is therefore unsustainable. Further, the company has already reversed the credit availed on common input services attributable to the manufacture of RPG. Hence, there remains no further liability to pay duty under Rule 6 of the Rules.

9. It is also observed that the company has already reversed the credit of the common input services. In this regard, reliance is placed on the following judgements wherein it has been held that no demand is sustainable in case of reversal of credit availed on the common inputs and input services even if such reversal is made after removal of the goods:-

(a) CGST v. Himmat Glazed Tiles
[2018 (15) GLTL 486 (Guj.)]

(b) CCE, Puducherry v. CESTAT, Chennai
[2015 (323) ELT 323]

(c) Jai Balaji Industries Ltd. Vs. CCE & ST
[2017 (352) ELT 86 (Tri.)] – which has been affirmed by Chhattisgarh High Court [2017 (356) ELT A48 (Chhattisgarh) and by Supreme Court in 2018 (360) ELT A121(SC).

(d) Mercedes Benz India Pvt.Ltd. v. CCE
[2015 (40) STR 381 (Tri.)]

(e) Food Fats & Fertilisers Ltd. v. CCE
[2009 (247) ELT 209 (Tri.)]

In view of the above discussions, the impugned order cannot be sustained and is therefore set aside. The appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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