IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/88017/2017

[Arising out of Order-in-Appeal No: MKK/20/RGD/APP/2017 dated 06/09/2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad.]

Exide Industries Ltd …***Appellant***

versus

Commissioner of Central Excise & Service Tax
Raigad …***Respondent***

Appearance:

Shri Rajesh Ostwal, Advocate for the appellant

Shri DS Chauhan, Superintendent (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 12/03/2018
Date of decision: 12/03/2018

ORDER NO: A/85658 / 2018

This appeal is directed against Order-in-Appeal No: MKK/20/RGD/APP/2017 dated 06/09/2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad

2. Heard both the sides and perused the records.

3. The issue that arises is whether the appellant is required to pay an amount equivalent to 6% of the value of the goods cleared which the department claims as trading activity or otherwise.

4. Appellant herein is a manufacturer of battery and procures polypropyelene co-polymer (PPCP) on which duty liability is discharged and availed CENVAT credit of such duty paid. Appellant clears the same PPCP to their various ventures for converting this PPCP to battery cases, plates, etc. While clearing the said PPCP to various vendors, appellant reverses the CENVAT credit availed on such PPCP on invoices. In the case in hand, show cause notice was issued to appellant demanding an amount equivalent to 6% of the value of the clearances of PPCP to various vendors on the ground that this activity amounts to trading of PPCP and trading activity being exempted and appellant having availed CENVAT credit of service tax paid on common input services; having not maintained separate accounts, he has to pay an amount equivalent to 6% of value of clearances of PPCP. Appellant contested the show cause notice and the adjudicating authority, after following due process of law, confirmed the demands raised along with interest and imposed penalty. Aggrieved by such an order, an appeal was preferred before first appellate authority. The first appellate authority, after following

due process of law, held that appellant is required to reverse the amount attributable to the clearances of PPCP calculated as per Rule 6(3A) of the CENVAT Credit Rules, 2004 and in order to arrive at the correct amount, has remanded the matter back to the adjudicating authority while upholding the penalties imposed and also the finding of the adjudicating authority that clearances of PPCP would amount to trading activity.

5. I find that the first appellate authority has totally mis-directed his findings on the main plea raised by appellant. Appellant had contended before the first appellate authority that PPCP which is received by them, imported as well as indigenously procured, were inputs as per the findings of the adjudicating authority in the proceedings initiated against the appellant. I find that the order-in-original No. 22/Taloja/R-VI/COMMR/KA/2013-14 dated 28/06/2013 proceedings were initiated against the appellant to deny them CENVAT credit on PPCP being not an input for the manufacturing activity and by the said order the adjudicating authority has dropped the proceedings initiated. It is informed that the order-in-original dated 28/06/2013 has been accepted by Revenue and no appeal was filed. If that be the case, claim of the appellant that they had cleared PPCP, the inputs to their vendors on reversal of CENVAT credit is correct and cannot be disputed. If an input is cleared from the factory of the appellant on reversal of CENVAT credit availed on such inputs,

the question of invoking the provisions of Rule 6(3A) of the CENVAT Credit Rules, 2004 does not arise as per the *ratio* laid down by the Tribunal in the case of *Commissioner of Central Excise, Ghaziabad v. U P Telelinks* [2015 (329) ELT 888 (Tri.Del.)]. I reproduce the *ratio* which is in paragraph 7 and covers the issue in the case in hand in favour of appellant.

> "7. I have gone through the records. Considering the submissions advanced by both sides. In the impugned order, none of the lower authorities have considered the defence taken by the assessee that they have cleared inputs as such and no verification has been done to that effect whether the assessee has cleared inputs as such or was involved in the activity of trading. Show cause notice has been issued only on the basis of figures shown in the balance sheet. For removal of inputs as such, Rule 3(5) clearly states that if inputs is removed as such, the assessee is required to reverse only Cenvat credit availed on such inputs. In judicial terms which has been contended by the assessee as mentioned hereinabove, if inputs is removed as such, in that case the assessee is required to reverse the credit availed on the inputs and not required to reverse proportionate credit on inputs service pertaining to such goods and required 6%/8% of the value of such goods. As revenue has failed to produce any evidence to show that appellant was involved in the trading activity, it may cleared inputs as such. In these set of facts, Cenvat credit taken by the assessee on the input which are cleared as such, is attributable to proportionate reversal is not supported by cogent reasons. Therefore, as per the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 the assessee was to reverse the Cenvat credit availed on inputs cleared as such.

> Therefore, I hold that assessee is not required to pay any amount equivalent to 6%/8% of the value of inputs cleared as such or reversal of proportional credit attributable to input cleared. With these terms, assessee's appeal is allowed and Revenue's appeal is dismissed."

6. In view of the foregoing, in the facts and circumstances of this case I hold that the impugned order is unsustainable and liable to be set aside and the appeal is allowed.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

**/as*