IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/160/2010

(Arising out of Order-in-Original No. 38/BR-34/Th-1/2009 dated 30.10.2009 passed by Commissioner of Central Excise, Thane-I)

Global Wool Alliance Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Thane-I **Respondent**

Appearance:

Shri M.H. Patil, Advocate, for appellant
Shri H.M. Dixit, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 19.3.2018
Date of Decision: 18.4.2018

ORDER NO. **A/86090/2018**

Per: Ramesh Nair

The facts of the case are that the appellant is engaged in the manufacture of wool tops, polyester tops, poly wool yarn/grey fabric/processed fabric etc. falling under Chapter Nos.51, 55 of Central Excise Tariff Act, 1985 and wool grease, lanolin and technical lanolin falling under heading 15.05 of the Central Excise Tariff Act, 1985. They are availing the cenvat credit facility under Cenvat Credit Rules, 2002/2004. The products wool grease, lanolin (described by the assessee as “lanolin anhydrous” also in clearance invoice) and technical lanolin cleared by the assessee are chargeable to nil rate of duty. During the manufacture of these products, they use cenvatable inputs viz. caustic soda/soda ash light, wool detergents, wool batching agents, servo lube generator oil for generation of electricity. The products wool grease, lanolin and technical lanolin come into existence during the course of manufacture of their final products viz. wool tops etc. The case of the department is that the appellant has not maintained any separate records in respect of common inputs used in the manufacture of wool grease, lanolin and technical lanolin being exempted goods as required under Rule 6(2) of the Cenvat Credit Rules, 2002/2004 and thus they have availed the cenvat credit on the common inputs used in the manufacture of these goods cleared at nil rate of duty as well as the goods cleared on payment of duty. Therefore, in terms of the provisions of Rule 6(3)(b) of the Cenvat Credit Rules, 2002/2004, the appellant is required to pay an amount equal to 8% or 10% of the total price of exempted final product. Accordingly, a demand of Rs.53,78,509/- which is equal to 8% of the value of the exempted goods, was confirmed under the proviso to Section 11A(1) of the Central Excise Act read with Rule 14 of the Cenvat Credit Rules, 2002/2004. An equal amount of penalty was also imposed under Section 11AC and demand of interest under Section 11AB was also confirmed. Being aggrieved by the said impugned order, the appellant filed the present appeal.

2. Shri M.H. Patil, learned counsel appearing on behalf of the appellant, submits that all the three goods which are cleared at nil rate of duty are by-products arising unavoidably during the course of manufacture of final product viz. wool tops. In case of manufacture and clearance of by-product, the cenvat credit in respect of the input contained in such by-product cannot be varied. Therefore, Rule 57CC of the Central Excise Rules, 1944 or Rule 6(3)(b) of the Cenvat Credit Rules, 2002/2004 has no application on the by-product cleared at nil rate of duty. In support, he placed reliance on the following judgments:-

(i) *Gas authority of India – 2001 (136) ELT 1019 (T);*

(ii) *Gas Authority of India – 2008 (232) ELT 7 (SC)*;

(iii) *BOC India Ltd. – 2003 (158) ELT 47 (T)*;

(iv) *Rallis India Ltd. – 2009 (233) ELT 301 (Bom)*;

(v) *Arti Drugs Ltd. – 2001 (133) ELT 385 (T)*.

He also placed reliance on the Hon'ble Supreme Court's judgment in the case of *UOI vs. Hindustan Zinc Ltd. – 2014 (303) ELT 321 (SC).*

3. Shri H.M. Dixit, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides. We find that the fact is not under dispute that all the three products viz. wool grease, lanolin anhydrous and technical lanolin are generated unavoidably during the course of manufacture of final product i.e. wool tops. Therefore, all these products are by-products. In this regard, we would like to go through the relevant Rule 57D of the Central Excise Rules, 1944 and Central Excise Instruction Manual which are reproduced below:-

> **"Rule 57D -**
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> "**Credit of duty not to be denied or varied in certain circumstances. -** (1) Credit of specified duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse or by-product arising during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product, whether or not such waste or refuse or by-product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or is not specified as a final product under Rule 57A."
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> "Sub-para (3.7) of para 3 of Chapter 5 of CBEC's Central Excise Manual – Cenvat credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product. Similarly, cenvat is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment

> of duty. The basic idea is that cenvat credit is admissible so long as the inputs are used in or in relation to the manufacture of final product and whether directly or indirectly."

4.1 From the plain reading of the erstwhile Rule 57D and sub-para (3.7) of CBEC's Central Excise Manual, it is mandated that if any input is contained in the by-product, waste or refuse, the cenvat credit on the said quantity of inputs cannot be denied. This provision is with the clear logic that the credit is available on the inputs so long as it is used in the manufacture of final product which is cleared on payment of duty. In the present case, all the inputs are used for manufacture of final product viz. wool tops which is cleared on payment of duty. However, the by-products are emerged unavoidably. Hence in the light of the above provisions, canvat credit cannot be denied on the input contained in the by-products. Consequently, the provisions of Rule 57CC of the Central Excise Rules, 1944, Rule 6(2)/6(3)(b) of the Cenvat Credit Rules, 2002/2004 have no application in the facts of this case. This very issue has been considered in *Hindustan Zinc Ltd.* (supra) by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court observed as under:-

> **"26.** Furthermore, the provisions of Rule 57CC cannot be read in isolation. In order to understand the scheme of Modvat credit contained in this Rule, a combined reading of Rules 57A, 57B and 57D along with Rule 57CC becomes

inevitable. We have already reproduced Rule 57D above. It can be easily discerned from a combined reading of the aforesaid provisions that the terms used are ‘inputs’, ‘final products’, ‘by-product’, ‘waste products’, etc. We are of the opinion that these terms have been used taking into account commercial reality in trade. In that context when we scan through Rule 57CC, reference to final product being manufactured with the same common inputs becomes understandable. This Rule did not talk about emergence of final product and a by-product and still said that Rule 57CC will apply. The appellant seeks to apply Rule 57CC when Rule 57D does not talk about application of Rule 57CC to final product and by-product when the by-product emerged as a technological necessity. Accepting the argument of the appellant would amount to equating by-product and final product thereby obliterating the difference though recognised by the legislation itself. Significantly this interpretation by the Tribunal in *Sterlite* (supra) was not appealed against by the department.

28. At the stage we should deal with the argument of non-maintainability of the writ petition filed by Hindustan Zinc Limited before the High Court. No doubt, it had filed writ petition at show cause stage. However, it was not merely the validity of show cause notice which was questioned. In the writ petition even the *vires* of Rule 57CC were challenged. That was a reason because of which the writ petitions were entertained, and rightly so, it is a different matter that while interpreting the rule, the High Court chose to read down the said rule and to give an interpretation which would save it from the vice of unconstitutionality. Moreover, other statutory appeal filed by the Department is against the order of CESTAT, which involves same question. Matter is argued in appeal before us also at length and we are deciding the same on merits. For all these reasons the argument of alternate remedy has to be discarded.”

Similar view has been given by the Hon'ble Supreme Court in the case of *Gas Authority of India* (supra) and by the Hon'ble Bombay High Court in the case of *Rallis India Ltd.* (supra) which was upheld by the Hon'ble Supreme Court.

5. In view of the settled legal position, the demand of 8% of the value of the by-products is not sustainable. Hence the impugned order is set aside and the appeal is allowed.

(Pronounced in court on 18.4.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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