CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.1781 of 2011

[Arising out of Order-in-Appeal No.PIII/RS/234/2011, dt.17.08.2011, dt.17.08.2011, passed by the Commissioner (Appeals), C.E., Pune-III]

M/s LG Electronics India Pvt. Ltd **......Appellant**
Plot No.A-5, MIDC, Ranjangaon
Pune-Nagar Road,
Pune 412 220

VERSUS

CCE Pune-III **......Respondent**
ICE House, 41-A,
Sasoon Road, Opp. Wadia College,
Pune 411 001

WITH

Excise Appeal No.88477 of 2014

[Arising out of Order-in-Original No.PUN-EXCUS-003-COM-008-14-15, dt.26.04.2014, passed by the CCE, Pune]

M/s LG Electronics India Pvt. Ltd **......Appellant**
Plot No.A-5, MIDC, Ranjangaon
Pune-Nagar Road,
Pune 412 220

VERSUS

CCE Pune-III **......Respondent**
ICE House, 41-A,
Sasoon Road, Opp. Wadia College,
Pune 411 001

Appearance:
For Appellant : Shri Gajendra Jain, Advocate
For Respondent : Shri Anil Choudhary, DC(AR)
Shri N.N. Prabhudesai, Supdtt. (AR)

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.A/87395-87396/2019

Date of Hearing: 18.12.2019
Date of Decision: 18.12.2019

PER: DR.D.M. MISRA

These two appeals are filed against respective orders since rest on the determination of a common issue, are take up together for disposal.

2. In appeal No.E/88477/2014, the facts in brief are that the Appellants are engaged in the manufacture of Colour Televisions, Refrigerators, Washing Machines, DVD Drives/DVD Writers and parts thereof falling under Chapter 84 & 85 of Central Excise Tariff Act, 1985. During the course of scrutiny of the records, it is revealed that one of their products viz. DVD Drive/DVD Writer falling under Chapter 84 of Central Excise Tariff Act, 1985 became unconditionally exempted w.e.f. 01.03.2007 under Notification No.6/2006-CE, dt.01.03.2006, as amended. The Appellants were availing CENVAT Credit on the inputs received by them before and after 01.03.2007 which were intended to be used on the manufacture of Optical Disc Drive (ODD). Alleging that since the Appellants were availing CENVAT Credit on inputs used in the manufacture of ODD which became exempted from payment of duty w.e.f. 01.03.2007, the provisions of Rule 11(3)(ii) of CENVAT Credit Rules, 2004 applicable, they were required to reverse the credit lying in balance as on 01.03.2007. Show Cause Notice was issued on 01.03.2009 for recovery of the total CENVAT Credit amount of Rs.1,94,12,316/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the Tribunal and this Tribunal vide Order dt.01.02.2012 remanded the matter for de-novo adjudication. In the de-novo adjudication, the Adjudicating Authority reduced the

demand to Rs.85,55,251/- with interest and penalty. Hence, the present appeal. In Appeal No.E/1781/2011, cash refund claim filed by the Appellant (EOU) under Rule 5 of CENVAT Credit Rules, 2004 for Rs.78,97,716/- was rejected on the ground that the credit was availed by the EOU unit on the goods received from the DTA unit, by reversing/payment of duty through CENVAT Credit which was not admissible to the said DTA unit on inputs cleared as such.

3. The learned Advocate for the Appellant submits that the DTA unit of the Appellant was setup on 06.04.2006 where various dutiable finished goods including Optical Disc Drive (ODD) had been manufactured after availing appropriate CENVAT Credit of duty paid on inputs, capital goods and input services which were used in the manufacture of finished goods. The DTA unit was clearing ODD in the domestic market on payment of duty and clearing for export under bond as well as under claim for rebate. The Appellant 100% EOU unit was set up on 22.03.2007. He has submitted that w.e.f. 01.03.2007, the ODD became unconditionally exempt by virtue of Notification No.6/2006-CE, dt.01.03.2006 as amended by Notification No.6/2007-CE, dt.01.03.2007. As on 01.03.2007, in relation to the said product, the Appellants were having in stock the duty paid inputs as such, forming part of work in progress and also contained in finished product. The total confirmed demand of Rs. 85,55,251/- comprises of credit of duty paid on inputs received during the month of March 2007 i.e. Rs.52,60,795/- which were cleared as such by the DTA unit to the EOU unit by reversing the credit in terms of Rule 3(5) of CENVAT Credit Rules, 2004; credit of duty paid on inputs received prior to 01.03.2007 and lying in stock

as on 01.03.2007 amounting to Rs.32,94,456/- also cleared as such to their EOU unit by reversing credit in terms of Rule 3(5) of CENVAT Credit Rules 2004. The amount reversed by the DTA unit, while clearing the inputs as such, and on receipt of the same by the 100% EOU unit, credit was taken in that unit and using the said inputs, finished goods were manufactured and cleared for export. It is his contention that some quantity of scrap generated in EOU unit was cleared in the domestic market on payment of appropriate excise duty. On export of these goods, the EOU unit filed refund claim of Rs.78,97,716/- under Rule 5 of CENVAT Credit Rules 2004 which was rejected by the Department.

4. The learned Advocate has further submitted that the learned Commissioner has erred in applying Rule 11(3)(ii) of CENVAT Credit Rules, 2004 in confirming the demand, ignoring the fact that the inputs lying in stock as on 01.03.2007 had not been used in their factory in the manufacture of exempted finished product viz. ODD nor the goods received in the month of March had been used in the DTA unit, but the same were cleared 'as such' after reversal of credit, following the procedure laid down under Rule 3(5) of CENVAT Credit Rules 2004. Since the DTA unit has already reversed the credit on inputs at the time of clearance of the same as such to their 100% EOU unit, directing reversal again of the credit attributable to such inputs under Rule 11(3)(ii) of CENVAT Credit Rules 2004 would be incorrect and it would result into an anomalous situation, whereby credit would be recovered twice on the same quantity of inputs. It is his contention that therefore, confirmation of demand of

Rs.32,94,456/- applying Rule 11(3)(ii) of CENVAT Credit Rules 2004 is unsustainable in law. With regard to the confirmation of demand of Rs.52,60,795/- on the inputs received during March 2007 under Rule 6(1) of CENVAT Credit Rules 2004, the learned Advocate has submitted that the said Rule would not apply to the clearance of inputs as such to DTA unit in view of the provisions contained under Rule 6(6)(ii) of CENVAT Credit Rules 2004. Therefore, the demand of Rs.52,60,795/- is also not maintainable. Since the CENVAT Credit has been correctly availed by the 100% EOU unit on the inputs cleared as such by the DTA unit, therefore, the cash refund of accumulated CENVAT Credit amounting to Rs.78,97,716/- is admissible to them.

5. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner. He has vehemently argued that in view of the clear wordings contained in Rule 11(3)(ii) of CENVAT Credit Rules 2004, the Appellant is required to reverse the CENVAT Credit in stock as on the date when the finished product became unconditionally exempted under Section 5(A) of Central Excise Act, 1944. Also, supporting the findings of the Adjudicating authority, the learned A.R. for the Revenue has submitted that the inputs received during the month of March 2007 when the final product i.e. ODD became exempted, the credit is inadmissible in accordance with the Rule 6(1) of CENVAT Credit Rules 2004. Therefore, confirmation of demand on this count is also justified.

6. Heard both sides and perused the records.

7. The issues involved for determination are whether:- (i) the Appellant's DTA unit is required to reverse the total CENVAT Credit of Rs.85,65,251/- on clearance of inputs 'as such' received before 01.03.2007 and during March 2007 to their 100% EOU unit when their final product became exempted w.e.f. 01.03.2007 and (ii) their 100% EOU unit is entitled to refund the accumulated CENVAT Credit of Rs.78,97,716/- under Rule 5 of CENVAT Credit Rules, 2004 on export of the finished goods. It is not in dispute that the finished goods manufactured by the Appellant i.e. DVD Drives/DVD Writers become unconditionally exempted from payment of duty w.e.f. 01.03.2007. At the time of exemption of the finished goods, the Appellants were having stock of inputs involving total credit of Rs.32,94,456/-. Also, during the month of March 2007, they received inputs meant to be used in their said exempted final product amounting to Rs.52,60,795/-. The contention of the Revenue is that in view of Rule 11(3)(ii) of CENVAT Credit Rules, 2004, the Appellants are required to reverse CENVAT Credit of Rs.32,94,456/- lying in stock as on 01.03.2007 at their factory premises. The argument o the Appellant, on the other hand, is that even though the inputs in stock as on 01.03.2007 was available for use, however, instead of putting the same into use in the manufacture of exempted final product, they cleared the said inputs on payment of duty, following the procedure laid down under Rule 3(5) of CENVAT Credit Rules, 2004. To examine the rival contention, it is necessary to reproduce the relevant rules viz. Rules 11(3) and 3(5) of CENVAT Credit Rules, 2004, which are as below.

Rule 11(3) of CENVAT Credit Rules, 2004

"RULE 11. Transitional provision. –

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT Credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) ...

(ii) the said final product has been exempted absolutely under Section 5A of the Act, and after deducting the said amount from the balance of CENVAT Credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilised for payment of duty or any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

Rule 3(5) of CENVAT Credit Rules, 2004

(5) When inputs of capital goods, on which CENVAT Credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9."

8. On plain reading of the Rule 11(3), it is clear that the manufacturer of a final product shall be required to pay an amount equivalent to the CENVAT Credit taken by him in respect of the inputs received for use in the manufacture of final product and lying in stock or is contained in the final product if he opts for exemption on the final product, whereas on the other hand, Rule 3(5) of CENVAT Credit Rules, 2004 allows the manufacturer to clear the inputs 'as such' from the factory or premises of the provider of the

output service, on payment of an amount equivalent to the credit availed in respect of such inputs and the removal shall be made in accordance with Rule 9 of CENVAT Credit Rules, 2004 i.e. against proper invoice. Both the said rules operate in different spheres and do not overlap. In the present case, the Appellants received the inputs when the final product was dutiable, on its exemption, chose to clear the inputs lying in stock 'as such' following the procedure laid down in Rule 3(5) of CENVAT Credit Rules, 2004 without its use in the manufacture of exempted final product. If the argument of the Revenue is accepted that the credit attributable to the inputs lying in stock would lapse, then the Appellants would be required to clear the inputs as such either without payment of duty or reversal of credit again on the same quantity of inputs on its clearance as such which would lead to an absurd situation and it cannot be intended by the legislature. Therefore, in our opinion, clearance of the inputs lying in stock as on 01.03.2007, after reversal of the credit following the procedure laid down under Rule 3(5) of CENVAT Credit Rules, 2004 is in harmony with Rule 11(3) of CENVAT Credit Rules, 2004 and not in conflict. Hence, reversal of credit on the inputs cleared as such, in our opinion, is in accordance with the law.

9. Even after exemption of their final product, the Appellant had continued to receive the 'inputs' during the month of March 2007 on which they availed credit and cleared instead of being used in their factory to their 100% EOU unit, following the procedure laid down under Rule 3(5) of CENVAT Credit Rules, 2004. We do not find merit in the observations of the learned Commissioner in confirming the demand under Rule 6(1) of CENVAT Credit Rules, 2004 in asmuch as

the Appellants had not utilised the inputs in the manufacture of exempted finished goods, but cleared as such to their 100% EOU unit. Even otherwise, such clearances are covered under the exception clause laid down under Rule 6(6)(ii) of CENVAT Credit Rules, 2004. Since the DTA unit has correctly reversed the credit on the inputs cleared as such to their 100% EOU unit, who in turn, availed the credit and utilised the same in the manufacture of exported goods, cash refund of accumulated CENVAT Credit of Rs.78,97,716/- under Rule 5 of CENVAT Credit Rules, 2004 cannot be held to be inadmissible to the EOU unit.

10. In the result, the impugned orders are set aside and both the appeals are allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Bahalkar