CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85789 of 2014

[Arising out of Order-in-Original No: 29/RN/COMMNR/M-II/2013-14 dated 29th November 2013 passed by the Commissioner of Central Excise, Mumbai – II.]

Godrej & Boyce Manufacturing Co Ltd
Pirojshanagar, Vikhroli, Mumbai – 400079 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – II
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug
Parel, Mumbai - 400012 ***…Respondent***

WITH

(i) Excise Appeal No: 87883 of 2014 (Godrej & Boyce Manufacturing Co Ltd); (ii) Excise Appeal No: 87884 of 2014 (Godrej & Boyce Manufacturing Co Ltd) and (iii) Excise Appeal No: 85374 of 2015 (Godrej & Boyce Manufacturing Co Ltd)

[Arising out of Order-in-Original No: 47 to 48/RN/COMMNR/M-II/2013-14 dated 29th March 2014 and Order-in-Original No: 09/RN/COMMNR/M-II/2014-15 dated 11th November 2014 passed by the Commissioner of Central Excise, Mumbai – II.]

<u>APPEARANCE</u>:

Shri A Hidayatullah, Senior Advocate with Shri Makrand Joshi, Advocate for the appellant

Shri RK Dwivedi, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85668-85671 / 2020

DATE OF HEARING: 11/11/2019
DATE OF DECISION: 11/06/2020

PER: C J MATHEW

Two of these appeals, arising from common adjudication proceedings, pertain to demands totaling ₹ 13,48,01,326 proposed for recovery in show cause notice dated 6th August 2013 for the period from 1st July 2008 to 30th September 2012 and from 1st November 2013 for the remaining part of the year 2012-13 for having discharged liability under rule 6(3) of CENVAT Credit Rules, 2004 by resort to both options simultaneously on clearances from the several plants of the appellant located within the same registered factory. Another appeal relates to demand of ₹ 1,56,19,370 on account of additional liability arising from non-inclusion of the value of inputs supplied free of cost by the customer for the period from 2009-10 to 2012-13.

2. Explaining the reasons for the dichotomous neutralization of CENVAT credit availed on 'inputs' and 'inputs services', procured in common for both dutiable and exempted goods, it is the contention of Learned Senior Counsel for the appellant that, in two of the plants, the

bulk of manufacture was intended for supply to defence organisations and Indian Space Research Organisation, entitled to clearance without payment of duty in accordance with notification no. 10/97-CE dated 1st March 1997 or notification no. 64/95-CE dated 16th March 1995**,** and that the variegated products emanating from other plants with several combinations of 'inputs' and 'inputs services' warranted each plant to be considered as separate factories.

3. Learned Authorized Representative submits that the appellant has admitted to their inability to maintain separate accounts for consumption of common 'inputs' and 'inputs services' and, thereby, entirely within the ambit of the rule 6(3) of CENVAT Credit Rules, 2004. He further submits that the two options under the Rules are mutually exclusive and that an assessee is mandated to consistently follow one or the other. According to him, having thus been in breach, the sole remedy, especially owing to non-compliance with the pre-requisites enumerated in rule 6(3A) of the said Rules, available with the adjudicating authority was to direct neutralization by recourse to the first option. He further submits that 'value', for the purposes of rule 6 of CENVAT Credit Rules, 2004, does not brook exclusion of the materials supplied by customers He, therefore, argues that impugned orders are legal and proper.

4. Learned Senior Counsel, besides making submissions on the bar

of limitation, argued that the subsequent amendment in rule 6 of CENVAT Credit Rules, 2004, being a substitution of provisions, should, in accordance with settled law on the issue subject, be retrospectively available and that the failure on the part of the adjudicating authority to extend that benefit rendered the impugned order to be untenable. Reliance is placed on the decision of the Hon'ble Supreme Court in *Zile Singh v. State of Haryana [(2004) 8 SCC 1]* which was applied by the Hon'ble High Court of Karnataka in *Commissioner of Central Excise v. Fosroc Chemicals (India) Ltd (2015 (318) ELT 240 (Kar)]* taking note of decision of the Tribunal having placed reliance upon *Sujana Metal Products Ltd v. Commissioner of Central Excise [2011 (273) ELT 112 (Tri)]* and of the Tribunal in *Commissioner of Central Excise v. Reliance Industries Ltd [2019-TIOL-1593-CESTAT-AHM]*. He further submits, by placing reliance on the decision of the Tribunal in *Mercedes Benz India (P) Ltd v. Commissioner of Central Excise, Pune-I [2015 (40) STR 381 (T)]*, *Aster Pvt Ltd v. Commissioner of Central Excise, Hyderabad [2013 (43) STR 411 (T)* and in that of *Tirupati Tubes v. Commissioner of Central Excise, Ghaziabad [2015 (327) ELT 210 (T)*, that it is settled law that tax authorities cannot, even in adjudication proceedings, enforce an option upon an assessee and that non-compliance with procedure should not stand in the way of exercise of available options. He further buttressed the proposition that goods supplied to defence organizations and the Indian Space Research Organization do not fall within the definition of 'exempted goods' as the privilege of exemption was subject to conditions.

5. It is clear from a reading of CENVAT Credit Rules 2004 that rule 6(1) and rule 6(2) complement each other and are in contradistinction with rule 6(3) which, qualified by the *non obstante* clause, operates on its own. The latter is unambiguously clear in conferring the privilege of exercising of option to the assessee. It was, therefore, not appropriate for the adjudicating authority to resort to computation that yielded higher revenue.

6. In view of the above circumstances, it would be appropriate for the adjudicating authority to consider the matters afresh after giving an opportunity to the appellant to furnish the computation preferred by them but strictly in accordance with the provisions of rule 6(3) of CENVAT Credit Rules, 2004. The claim of Learned Senior Counsel that the plants should be deemed as separate registrations is not acceptable in law. The appellant is at liberty to raise the submissions pertaining to retrospective application of the revised computation methodology, as well as the claim of certain clearances being excluded from the definition of 'exempted goods', before the adjudicating authority. While these are to be specifically considered in the light of submissions made before us, we clarify that all other issues are also

kept open for disposal in the fresh proceedings.

7. To enable *de novo* adjudication, we set aside the impugned orders and remand the matters back to the adjudicating authority.

(Order pronounced in the open court on 11/06/2020)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*