

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 85251 OF 2013

[Arising out of Order-in-Original No: 25/P-III/COMMR/C.EX/2012-13 dated 12th October 2012 passed by the Commissioner of Central Excise & Service Tax, Pune – III.]

Siddheshwar SSK Ltd

Tikekarwadi, Tal: North Solapur, Dist: Solapur - 413224

... *Appellant*

versus

Commissioner of Central Excise

Pune – III

41-A Ice House, Sassoon Road, Pune - 411001

...*Respondent*

APPEARANCE:

Shri J N Somaiya, Advocate for the appellant

Shri Deepak Bhilegaonkar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86764/2023

DATE OF HEARING:

06/06/2023

DATE OF DECISION:

06/10/2023

PER: C J MATHEW

This appeal of M/s Siddheshwar SSK Ltd against order¹ of Commissioner of Central Excise, Pune-II relates to the period between April 2009 and March 2011 and challenges recovery of ₹ 57,50,058 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944 while imposing penalty of like amount under section 11AC of Central Excise Act, 1944 by recourse to two separate options afforded by rule 6 of CENVAT Credit Rules, 2004. The credit directed to be reversed arose from attribution of the impugned ‘taxable services’ in production of ‘rectified spirit’ and of ‘kraft paper’ along with manufacture of ‘sugar’, ‘molasses’ and ‘denatured spirit’ that are cleared on payment of duty. As far as ‘kraft paper’ is concerned, clearances were governed by notification no. 4/2006-CE dated 1st March 2006 (at serial no. 90) foregoing levy of duty on clearances to the extent of 3500 MT per annum. As ‘rectified spirit’ was not excisable, show cause notice had proposed that credit proportional to production be reversed and for reversal pertinent to ‘kraft paper’, being excisable but exempt, be computed 10%/5% as prescribed in rule 6 of CENVAT Credit Rules, 2004.

2. It was contended by Learned Counsel for appellant that rule 6 of CENVAT Credit Rules, 2004 is intended to neutralize credit taken on ‘inputs’ or ‘input services’ used in manufacture of goods that are

¹ [order-in-original no. 25/P-III/COMMR/C.EX/2012-13 dated 12th October 2012]

exempted from duty and not partially exempt, as 'kraft paper' was. Reliance was placed on decision of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Tirunelveli v. DCW Ltd* [2011 (274) ELT 183 (Mad)] and in *Shardlow India Ltd v. Commissioner of Central Excise, Chennai* [2017 (8) TMI 1162 –CESTAT Chennai)].

3. Relying on decisions of the Hon'ble High Court of Calcutta in *Commissioner of Service Tax-1, Kolkata v. Surya Vistacom Pvt Ltd* [2022 (66) GSTL 290 (Cal)] and of the Hon'ble High Court of Telangana in *Tiara Advertising v. Union of India* [2019 (30) GSTL 474 (Telangana)], it was contended that it was not open to the adjudicating authority to insist on a specific form of neutralization and, more especially, when an audit objection relating to utilization of 'molasses' in rectified spirit had been settled by reversal of proportional credit. It was further demonstrated that, with effective disputed credit being ₹ 6,89,777, the impugned order has been disproportionate in taking recourse to rule 6 of CENVAT Credit Rules, 2004 and, by reference to the decision of the Tribunal in *Tata Technologies Ltd v. Commissioner of Central Excise, Pune-I* [2016 (42) STR 290 (Tri-Mumbai)], it was contended that the option vests always, and every time, with the assessee.

4. According to Learned Authorized Representative, it was admitted fact that appellant had not maintained separate books of

accounts for ‘dutiable goods’ and ‘exempt goods’ thus precluding availability of information for any option other than the one resorted to by the adjudicating authority. Reliance was placed on the decision of the Hon’ble High Court of Bombay in *RR Paints Pvt Ltd v. Commissioner of Central Excise, Mumbai* [2014 (33) STR 156 (Bom)] to submit that the extended period can be invoked on the basis of facts specific to the dispute.

5. The coverage of partial, and conditional exemption, as a bar to retention of credit, in terms of rule 6 of CENVAT Credit Rules, 2004 is no longer *res integra*. The Tribunal in *re Shardlow India Ltd* has held that

‘5. The issue whether the appellants are clearing exempted goods when they are clearing the forgings and dies to Heavy Vehicles Factory availing exemption benefit under Notification No. 70/92 has been considered by the judgments relied upon by the learned counsel for the appellant. In similar case, where the goods were cleared to M/s. Space Centre and M/s. Baba Atomic Research Centre in the case of *DCW Ltd.* (supra), the jurisdictional High Court has considered that the said goods cannot fall under the category of exempted goods as provided in Rule 57CC(1) of the erstwhile Central Excise Act, 1944.’

6. Insofar as ‘input service’ used in manufacture of ‘rectified spirit’, and non-excisable, is concerned,

‘(d) “exempted goods” means excisable goods which are

exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;’

of rule 2 of CENVAT Credit Rules, 2004

and

‘Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.’

below rule 6(1) of CENVAT Credit Rules, 2004 make it abundantly clear that proportionate credit availed on services used in common is to be reversed. The appellant has not done so and this, combined with absence of reporting of production of ‘rectified spirit’, brings the full force of the decision of the Hon’ble Supreme Court in *re RR Paints Pvt Ltd* to discard the plea of limitation as bar to recovery. However, as held in *re Tata Technologies Ltd*, reversal of proportionate credit suffices for compliance with rule 6 of CENVAT Credit Rules, 2004.

7. In *Mercedes Benz India (P) Ltd v. Commissioner of Central Excise, Pune-I* [2015 (40) STR 381 (Tri-Mumbai)], the Tribunal held

that

'5.4 We find that the appellant admittedly paid an amount of Rs. 4,06,785/- plus interest, this is not under dispute. Therefore in our view, the appellant have complied with the condition prescribed under Rule 6(3)(ii) read with sub-rule (3A) of Rule 6 of Cenvat Credit Rules, therefore demand of huge amount of Rs. 24,71,93,529/- of the total value of the vehicle amounting to. Rs. 494,38,70,577/- sold in the market cannot be demanded. We are also of the view that Rule 6 of the Cenvat Credit Rules is not enacted to extract illegal amount from the assessee. The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that if the assessee does not opt any of the option at a particular time, then option of payment of 5% will automatically be applied. Therefore we do not understand that when the appellant have categorically by way of their intimation opted for option provided under sub-rule (3)(ii), how Revenue can insist that option (3)(i) under Rule 6 should be followed by the assessee.'

and it is not in doubt that any of the options may be chosen by the assessee. We, therefore, restrict the recovery under rule 14 of CENVAT Credit Rules, 2004 to such amount as is computed by the appellant herein.

8. We also find no reason to sustain the penalty imposed under section 11AC of Central Excise Act, 1944 as there is no allegation of evasion of duty otherwise payable on account of non-availability of sufficient credit on clearance of dutiable goods. Accordingly, the impugned order is modified to limit recovery by any method then available under rule 6 of CENVAT Credit Rules, 2004 to be exercised by the appellant herein within 30 days of receipt of this order and to the extent of tax attributable to 'input service' used in manufacture of 'rectified spirit' during the relevant period.

(Order pronounced in the open court on 06/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*