CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85590 OF 2015

[Arising out of Order-in-Original No: 49/AC/COMMR/TH-II/2014 dated 23RD December 2014 passed by the Commissioner of Central Excise, Thane – II.]

Ciron Drugs & Pharmaceuticals Pvt Ltd
Plot N-118-119 & 113, MIDC, Tarapur
Boisar, Dist: Palghar – 401506 … ***Appellant***

versus

Commissioner of Central Excise
Thane – II
Navprabhat Chambers, Ranade Road, Dadar West
Mumbai - 400028 ***…Respondent***

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant for the appellant

Shri Mahesh Yashwant Patil, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85855/2024

DATE OF HEARING:	08/03/2024
DATE OF DECISION:	05/09/2024

PER: C J MATHEW

M/s Ciron Drugs & Pharmaceuticals Pvt Ltd was proceeded against for recovery of ₹ 4,49,13,262 attributable to non-entitled

CENVAT credit by non-maintenance of separate accounts of 'inputs' and 'input services' used for manufacturing of 'exempted goods' and rendering of 'exempted service' for the period 1st April 2009 to 31st March 2013. Earlier too, they had been issued with notice dated 7th April 2010 for recovery of such credit availed between April 2005 and March 2009. During the impugned proceedings, the appellant had submitted that credit proportionate to the 'inputs' and 'input services' used for manufacture of 'exempted goods' and rendering of 'exempted service' had been reversed.

2. The impugned order[1] of Commissioner of Central Excise, Thane-II confirmed recovery of the proposed amount solely by relying upon the provisions of rule 6 of CENVAT Credit Rules, 2004 and by holding that, except in circumstances of specific adoption of the alternative in rule 6(3A) of CENVAT Credit Rules, 2004, reversal to the extent prescribed in rule 6(3) is mandated. He further relied upon certain judgments to conclude that the proposal in the show cause notice was appropriate and that the extended period could be invoked. Consequently, he confirmed the demand under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AA of Central Excise Act, 1944, besides imposing penalty of like amount under rule 15 of CENVAT Credit Rules, 2004.

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[1] [order-in-original no. 49/AC/COMMR/TH-II/2014 dated 23RD December 2014]

3. We have heard Learned Chartered Accountant for the appellant and Learned Authorised Representative.

4. The impugned order is woefully inadequate in not having examined the facts in the notice for veracity in the light of submissions of the noticee. Furthermore, as has been pointed out by Learned Chartered Accountant, it has been held by the Tribunal in *Accura Valves Pvt Ltd v. Commissioner of CGST & Central Excise, Nashik [2018 (12) TMI 428-CESTAT MUMBAI]*, as also in *Eaton Fluid Power Ltd v. Commissioner of Central Excise & Service Tax, Pune-I [2023 (12) TMI172 – CESTA MUMBAI]*, that payment of amount as prescribed in rule 6(3) cannot be forced upon an assessee,. It is also pointed out by him that in their own earlier dispute, the Tribunal, in *Commissioner of Central Excise, Thane – II v. Ciron Drugs & Pharma P Ltd [2016-TIOL-1415-CESTAT-MUM]*, had accepted the plea of proportionate credit reversal as sufficient compliance of rule 6(3) of CENVAT Credit Rules, 2004.

5. It is now settled law that reversal of credit proportionate to that borne by the value of ‘exempted goods’ and/or ‘exempted service’ to value of total goods and/or exempted services suffices for CENVAT Credit Rules, 2004. The adjudicating authority had failed to take note of the facts to which the settled law were be applicable. We, ourselves, are unable to determine the appropriateness of the reversal effected by

the appellant in the absence of such scrutiny by the adjudicating authority.

6. To enable that, we set aside the impugned order and remand the matter back to the original authority for a fresh decision based on submissions of the appellant and the law as settled.

(Order pronounced in the open court on 05/09/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*