

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 118 of 2006

(Arising out of Order-in-Original No. 59/ASR/2005/ADJ dated 27.10.2005 passed by the Commissioner of Central Excise, Pune-III)

M/s Schreiber Dynamix Dairies Limited **.... Appellant**
E-94, MIDC Industrial Area, Bhigwan Road,
Baramati, Pune

Versus

**Commissioner of Central Goods & Service Tax,
Pune-III** **.... Respondent**
GST Bhavan (ICE House), 41/A Sassoon Road,
Opp. Ness Wadia College, Pune – 411 001

WITH

Excise Appeal No. 836 of 2006

(Arising out of Order-in-Original No. 68/ASR/2005/ADJ dated 23.12.2005 passed by the Commissioner of Central Excise, Pune-III)

M/s Schreiber Dynamix Dairies Limited **.... Appellant**
E-94, MIDC Industrial Area, Bhigwan Road,
Baramati, Pune

Versus

**Commissioner of Central Goods & Service Tax,
Pune-III** **.... Respondent**
GST Bhavan (ICE House), 41/A Sassoon Road,
Opp. Ness Wadia College, Pune – 411 001

AND

Excise Appeal No. 837 of 2006

(Arising out of Order-in-Original No. P-III/BKS/CEX/02/2005-06 dated 27.01.2006 passed by the Commissioner of Central Excise, Pune-III)

M/s Schreiber Dynamix Dairies Limited **.... Appellant**
E-94, MIDC Industrial Area, Bhigwan Road,
Baramati, Pune

Versus

**Commissioner of Central Goods & Service Tax,
Pune-III** **.... Respondent**
GST Bhavan (ICE House), 41/A Sassoon Road,
Opp. Ness Wadia College, Pune – 411 001

AND

Excise Appeal No. 838 of 2006

(Arising out of Order-in-Original No. P-III/BKS/CEX/03/2005-06 dated 27.01.2006 passed by the Commissioner of Central Excise, Pune-III)

M/s Schreiber Dynamix Dairies Limited**.... Appellant**

E-94, MIDC Industrial Area, Bhigwan Road,
Baramati, Pune

Versus

**Commissioner of Central Goods & Service Tax,
Pune-III****.... Respondent**

GST Bhavan (ICE House), 41/A Sassoon Road,
Opp. Ness Wadia College, Pune – 411 001

Appearance:

Shri Sriram Sridharan a/w Ms. Aditi Jain, Advocates for the Appellants

Shri Hemant Kumar Tantia, Authorized Representative for the Respondents

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85352-85355/2025**

Date of Hearing: 12.03.2025

Date of Decision: 12.03.2025

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Non-reversal of CENVAT Credit on Furnace Oil used in the manufacture of both dutiable as well as exempted goods, is the subject matter of the present dispute. This is the second round of litigation before the Tribunal. In the earlier round of litigation, the impugned order passed by the adjudicating authority was appealed against before the Tribunal, which was disposed of vide order dated 18.07.2006, in allowing the appeals in favour of the appellants. In the said order, it was held that the input 'fuel' should not fall within the scope and ambit of Rule 57CC of the erstwhile Central Excise Rules, 1944 and Rule 6 of the CENVAT Credit Rules, 2001, 2002 & 2004, for the purpose of reversal of CENVAT Credit. The said order of the Tribunal was assailed against by Revenue before the Hon'ble Bombay High Court and vide judgement dated 28.06.2024, the Hon'ble High Court have remanded the matter back to the Tribunal for deciding the issue afresh on the basis of judgement of Hon'ble Supreme

Court delivered in the case of *Commissioner of Central Excise, Vadodara-II Vs. Gujarat Narmada Valley Fertilizers Co. Ltd. - 2020 (371) E.L.T. 3 (S.C.)*.

3. When the matter was called out for hearing, Shri Sriram Sridharan appearing for the appellants submitted that as per the judgment delivered by the Hon'ble Supreme Court in the case of *Gujarat Narmada Valley Fertilizers Co. Ltd. (supra)*, the appellants were required to reverse the CENVAT Credit in respect of inputs i.e., Furnace Oil used for manufacture of the exempted goods and that the appellants had in fact, reversed the credit on the basis of formula adopted by them inasmuch as the quantity of Furnace Oil actually used for manufacture of the exempted goods was considered for reversal on pro-rata basis.

4. Learned AR appearing for the Revenue has reiterated the findings recorded in the impugned order and further submitted that the appellants were required to reverse the CENVAT Credit, in view of the fact that Rule 6 *ibid* only provides for exempted goods and not for the goods, attracting 'NIL' rate of duty.

5. With regard to applicability of the provisions of Rule 57CC *ibid* and Rule 6 of the Rules of 2001/2002/2004, we find that the issue was highly contentious and there were divergent views expressed by the different judicial forums. Finally, the dispute was resolved by the Hon'ble Supreme Court in the case of *Gujarat Narmada Valley Fertilizers Co. Ltd. (supra)*. The relevant paragraphs recorded in the said judgment are extracted herein below: -

"8. *This Court in (2009) 9 SCC 101 = 2009 (240) E.L.T. 661 (S.C.) [CCE v. Gujarat Narmada Fertilizers Co. Ltd.], (supra), after setting out the Central Excise MODVAT Rules as they stood in 2000, together with the Cenvat Credit Rules, then went on to hold :*

"15. As can be seen from the submissions, the contention of the assessee is that exclusion of fuel inputs from the purview of sub-rule (2) of Rule 6 would mean that such inputs are also automatically excluded from sub-rule (1) whereas according to the Department sub-rule (1) is a general rule which provides, that except for the circumstances mentioned in sub-rule (2), CENVAT credit shall not be allowed on such quantity of inputs used in the manufacture of exempted goods and even though fuel-inputs are excluded from sub-rule (2), such inputs would still fall under sub-rule (1).

16. In our view, sub-rule (1) is plenary. It restates a principle, namely, that CENVAT credit for duty paid on inputs used in the manufacture of exempted final products is not allowable. This principle is in-built in the very structure of the CENVAT scheme. Sub-rule (1), therefore, merely highlights that principle. Sub-rule (1) covers all inputs, including fuel, whereas sub-rule (2) refers to non-fuel inputs. Sub-rule (2) covers a

situation where common cenvatted inputs are used in or in relation to manufacture of dutiable final product and exempted final product but the fuel input is excluded from that sub-rule. However, exclusion of fuel input vis-a-vis non-fuel input would still fall in sub-rule (1). As stated above, sub-rule (1) is plenary, hence, it cannot be said that because sub-rule (2) is inapplicable to fuel-input(s), CENVAT credit is automatically available to such inputs even if they are used in the manufacture of exempted goods.

17. The cumulative reading of sub-rules (1) and (2) makes it abundantly clear that the circumstances specified in sub-rule (2), which inter alia requires separate accounting of inputs, are not applicable to the fuel input(s). However, the said sub-rule (2) nowhere says that the legal effect of sub-rule (1) will stand terminated in respect of fuel inputs which do not fall in sub-rule (2). In other words, the legal effect of sub-rule (1) has to be applied to all inputs including fuel inputs, only exception being non-fuel inputs, for which one has to maintain separate accounts or in its absence pay 8%/10% of the total price of the exempted final products.

18. Therefore, sub-rule (1) shall apply in respect of goods used as "fuel" and on such application, the credit will not be permissible on such quantity of fuel which is used in the manufacture of exempted goods. In our view, the above aspect has not been properly appreciated by the Gujarat High Court in Gujarat Narmada, (2006) 9 SCC 193.

19. For the above reasons, we find merit in the Department's civil appeals."

9. *Thus, the finding of this Court restates an important principle under the Cenvat Credit Rules, and which is inbuilt in the structure of the Cenvat credit scheme, which is that Cenvat credit for duty paid on inputs used in the manufacture of exempted final products cannot be allowed. It is only a reflection of this larger principle which is contained in Rule 6. When Rule 6(1) says that the Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, it relies upon the definition of "inputs" contained in these Rules which certainly include LSHS and steam and electricity that are produced in the manufacturing process utilizing LSHS. The exception that is contained in sub-rule (2) refers to all inputs except inputs intended to be used as fuel which then results in the manufacture of final products which are both chargeable to duty as well as exempted goods. What is clear is that the exception to sub-rule (1) which is contained in sub-rule (2) itself contains an exception, namely, inputs intended to be used as fuel. This being the case, the moment it is found that inputs are intended to be used as fuel, such inputs go outside the ken of sub-rule (2) of Rule 6. When this happens, the exception contained in sub-rule (2) does not come into effect at all as a result of which sub-rule (1) must be applied on its own terms.*

6. On careful reading of the said relied upon judgment, we find that the Hon'ble Supreme Court have distinguished the contents in both the Rules i.e. sub-rule (1) and sub-rule (2) of Rule 6 *ibid*. Since sub-rule (2) of Rule 6 *ibid* has not dealt with the input i.e., 'fuel', in order to maintain separate records by the assessee, it was held that as per the provisions of sub-rule (1) of Rule 6 *ibid*, the assessee is required to reverse the CENVAT Credit availed on fuel used in or in relation to manufacture of the exempted goods. It is an admitted fact on record that the appellants had reversed the CENVAT Credit on pro-rata basis in respect of the Furnace Oil used for manufacture of the exempted final product. The said fact is evident from

the letter dated 24.08.2012 addressed by the appellants to the jurisdictional Central Excise Commissionerate, intimating the reversal particulars of the credit availed in respect of Furnace Oil used in the manufacture of exempted goods. However, it was contended by the learned Advocate that the appellants had not reversed the CENVAT Credit availed by them, in respect of which the proceedings were initiated by the Department beyond the normal period of limitation. The appellants have contended that non-reversal of CENVAT Credit, involving the extended period of limitation, was owing to the reason that there was no element of suppression of facts, mis-statement etc., with intent to evade the government revenue. In this context, learned Advocate appearing submitted that with regard to Rule 57CC *ibid* and Rule 6 *ibid*, the issues were highly contentious and there were divergent views expressed by different judicial forums. Thus, he contended that the charges of suppression, mis-statement etc., cannot be levelled against the appellants, justifying invocation of extended period of limitation, prescribed under Rule 57(1) *ibid* and Rule 14 *ibid*, read with Section 11A of the Central Excise Act, 1944. We are in agreement with the submissions made by the learned Advocate for the appellants that the charges of suppression, mis-statement etc., cannot be fastened on the appellants inasmuch as they had maintained proper records to demonstrate the actual quantity of Furnace Oil used in the manufacture of the exempted goods and the said particulars were also furnished by them before the jurisdictional Central Excise authorities under the cover of their letter dated 05.05.2000. The demand, if any, in our considered view, should be calculated with respect to the normal period prescribed under Section 11A *ibid*. Since the appellants had averred that in the letter dated 24.08.2012, they had intimated the jurisdictional Central Excise authorities regarding reversal of MODVAT/CENVAT Credit availed by them, we are of the view that matter should be remanded to the original authority for the limited purpose of verification of records to ascertain the accuracy of the submissions made by the appellants regarding reversal of MODVAT/CENVAT Credit by them.

7. In view of the foregoing discussions and analysis, we are of the considered opinion that the adjudged demands confirmed in the impugned orders against the appellants cannot be sustained for judicial scrutiny. The matter is remanded to the adjudicating authority only for limited purpose of verification of the MODVAT/CENVAT Credit reversed by the appellants and if such reversal particulars are duly captured in the books of accounts/

records, then the CENVAT Credit should be allowed by the original authority at the time of *de novo* adjudication proceedings. Needless to say that opportunity of personal hearing should be granted to the appellants for verification of records to be submitted by the appellants, evidencing reversal of MODVAT/CENVAT Credit by them.

8. All the appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha