CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Miscellaneous Application No. 85222 of 2021

(on behalf of Appellant)

in

Excise Appeal No. 615 of 2011

(Arising out of Order-in-Appeal No. PII/VM/341/2010 dated 08.12.2010 passed by Commissioner of Central Excise (Appeals), Pune-III)

M/s. Jubilant Ingrevia Limited .....**Appellant**
Nimbut Nira, Baramati,
Pune 412102.

VERSUS

Commissioner of Central Excise, Pune .....**Respondent**
ICE House, 41-A, Sasson Road,
Opposite Wadia College, Pune – 411001.

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant
Ms. Anuradha Parab, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87246/2021

Date of Hearing: 29.11.2021
Date of Decision: 29.11.2021

PER : S.K. MOHANTY

Applicant has filed this miscellaneous application, seeking change of name of the appellants from "Jubilant Life Sciences Limited" to **"Jubilant Ingrevia Limited".** I have perused the order passed by the learned National Company Law Tribunal as per Section 230-232 of the Companies Act, 2013 in Form No.CAA.7 [pursuant to Section 232 of the Companies Act, 2013 and Rule 20 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]. Since as per the said order, the name of the appellant's company has been changed, such changed name has been incorporated in the preamble of the present final order. Miscellaneous application is accordingly, disposed of.

2. Brief facts of the case, leading to this appeal, are summarized herein below:

2.1 The appellants herein, are engaged *inter alia*, in the manufacture of 'Organic Chemicals', which attract payment of Central Excise duty on their removal from the factory. The appellants are also engaged in the manufacture of 'Rectified Spirit' (RS) and 'Extra Neutral Alcohol' (ENA), which are exempted from payment of duty. The appellants use molasses purchased on payment of Central Excise duty at specific rate of Rs.750/- per ton basis in the manufacture of RS. The RS so manufactured in their factory is either captively consumed in the manufacture of ENA or sold as such in the domestic market. Since the appellants are engaged in the manufacture of both dutiable as well as exempted goods, they were under the statutory obligation to comply with the requirements of Rule 6 of the Cenvat Credit Rules, 2004. For the period prior to 31.03.2008, the appellants were paying the amount equivalent to the Cenvat Credit (Rs.750/- per M.T. '+' education cesses) attributable to molasses used in the manufacture of the exempted final products i.e. RS and ENA. Such payments were made in terms of Rule 6(3)(a) *ibid*, effective at the material time.

2.2 Rule 6(3) of the Cenvat Credit Rules, 2004 was amended w.e.f. 01.04.2008. Under such amended provisions, the assessee engaged in the manufacture of both dutiable and exempted goods was provided with the option for not maintaining separate accounts and was required to pay either (i) an amount equal to ten percentage of the value of exempted goods; or (ii) an amount on proportionate basis, which is calculated in terms of Rule 6(3A) *ibid*. While exercising the option under Rule 6(3)(ii) ibid, an assessee has to provide an intimation to the Range Superintendent along with the prescribed details. It has also been provided in the said rule that the option once exercised, cannot be changed in the remaining part of that year. W.e.f. 07.07.2009, the rate prescribed under Rule 6(3)(i) *ibid* was brought down to five percentage of the value of the exempted goods.

2.3 However, even after post amendment of Rule 6(3) *ibid* (effective from 01.04.2008), due to ignorance the appellants had paid an amount in respect of molasses used in the manufacture of RS and ENA in terms of erstwhile Rule 6(3)(a) *ibid* during the disputed period from April to September 2009. Realizing the mistake that they had paid the excess amount, which was not payable under the amended provisions of Rule 6(3) *ibid*, filed the refund application before the jurisdictional Central Excise authority, claiming such excess amount as refund.

2.4 The refund application filed by the appellants was adjudged by the Assistant Commissioner of Central Excise, Pune-IX vide order dated 16.07.2010, in rejecting the same on the ground that as per the provisions of Rule 6(3) (ii) *ibid*, the appellant had paid the correct amount in respect of the input and input services used for manufacture of the exempted goods. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 08.12.2010 has upheld rejection of the refund application by the original authority. Against such rejection of appeal, the appellants had preferred appeal before the Tribunal, which was also rejected vide Final Order dated 09.03.2016. Feeling aggrieved with the said order of the Tribunal, the appellants had preferred further appeal before the Hon'ble Bombay High Court, which was disposed of vide judgment dated 16.04.2018, by way of remanding the matter back to the Tribunal. In terms of the remand direction of the Hon'ble Bombay High Court, the appeal is being taken up for hearing and disposal by the Tribunal.

3. Heard both sides and perused the records.

4. The appellants have contended that during the period in dispute, they had not reversed the proportionate Cenvat Credit as required under Rule 6(3) (ii) *ibid* and had reversed the entire Cenvat Credit attributable to molasses used in the manufacture of both RS and ENA, in terms of erstwhile Rule 6 (3) (a) *ibid*. Thus, the appellants have submitted that reversal of Cenvat Credit under Rule 6 (3) (a) *ibid* is definitely in the higher side, in comparison to the reversal required to be made under Rule 6(3) (i) *ibid.* Accordingly, the appellants have stated that in respect of the excess reversal of Cenvat Credit, they should be entitled for the benefit of refund.

5. On perusal of the case records, it transpires that the appellants had reversed the entire Cenvat Credit attributable to the molasses used in the manufacture of RS and ENA, in terms of the erstwhile Rule 6 (3) (a) *ibid.* Though the said rule was not in vogue after the period 01.04.2008, but in comparison to the Credit required to be reversed under Rule 6(3) (i) *ibid* i.e. 10/5% of the value of exempted goods, the credit already reversed by the appellants was in the higher side. Thus, in my considered view, the appellants had correctly filed the refund application under Section 11B of the Central Excise Act, 1944 before the jurisdictional Central Excise authorities, claiming excess amount paid by them. With regard to the issue of applicability of the provisions of Rule 6 (3)(ii) *ibid* is concerned, it is an admitted fact on record that the condition provided under sub-rule (3A) of Rule 6 *ibid* has not been fulfilled by the appellants inasmuch as they had not exercised the option to continue under the said rule, which is evident from the fact that no intimation in writing was filed by the appellants before the jurisdictional range superintendent, opting for operation under the said rule. Hence, it cannot be said that the appellants were governed under Rule 6(3) (ii) *ibid* read with sub-rule (3) of Rule 6 *ibid*.

6. In view of above discussions, I am of the considered opinion that the appellants should be entitled to the benefit of refund of excess amount paid by them. Therefore, I do not find any merits in the

impugned order, insofar as it has upheld rejection of the refund application. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant, with consequential benefit of refund.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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