CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL NO. 87291 OF 2016

(Arising out of Order-in-Original No. Belapur/13/Taloja/R-IV/COMMR/SFA/2016-17/BEL dated 30.06.2016 passed by the Commissioner of Central Excise & Customs Belapur)

Exide Industries Ltd. **.... Appellants**
T-17, MIDC, Taloja,
Raigad

Versus

Commissioner of CGST & Central Excise, Belapur .... Respondent
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400 614

APPEARANCE:

Ms. Payal Nahar, Advocate for the Appellant

Ms. Prakriti Nigam, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86826/2025

Date of Hearing: 30.07.2025
Date of Decision: 19.11.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Exide Industries Ltd. (herein after, for short, referred to as 'the appellants') against the Order-in-Original No. Belapur/13/Taloja/R-IV/COMMR/SFA/2016-17/BEL dated 30.06.2016 (herein after, referred to, as 'the impugned order') passed by the Commissioner of Central Excise & Customs, Belapur.

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

2.2 The appellants are a private limited company engaged in manufacture of Electric Storage Batteries and parts thereof, falling under Chapter 85 of the Central Excise Tariff Act, 1985 and for the purpose payment of central excise duty and for compliance with the Central Excise statute, they are registered with the jurisdictional Central Excise authorities holding Central Excise Registration No. AAACE6641EXM005.

2.3 The appellants clear the final product electric storage batteries on payment of Central Excise duty and avail CENVAT Credit of excise duty paid on capital goods and inputs as well as service tax paid on input services used in or in relation to manufacture of said batteries. The batteries are manufactured by assembly of various parts such as positive plate, negative plat terminals, safety valve, electrolyte, etc. All the said parts are housed in a plastic container with lid.

2.4 In the manufacture of the battery, the appellants use Polypropylene Co-Polymer (PPCP) as one of the inputs, since it is the raw material used for making the container, lids, and plugs for the battery. During the disputed period, the appellants imported as well as locally purchased PPCP on payment of duty. On receipt of PPCP in its factory, the appellants took CENVAT credit of duty paid as they are admittedly inputs. As they did not have injection molding facility in their factory, they supplied PPCP to molding manufacturers/Moulders on sale basis for the purpose of manufacture of battery parts. The appellants claimed that PPCP was cleared on sale basis only for practical convenience and ease in their inventory management, and it was not sold with a profit motive by them; they are not a seller of PPCP in the ordinary course of business but are only a manufacturer of batteries. However, during the EA-2000 audit conducted by the department, the audit officers were not satisfied with the explanation given by the appellants as above and the department had interpreted that such activity of the appellants tantamount to their engaging in trading of PPCP, which is an exempted service. Therefore, the department had initiated show cause proceedings for denial of CENVAT credit on input services, which are allegedly common for 'manufacture of batteries' as well as 'trading of PPCP' which is liable to be paid in terms of Rule 6(3)(i) of CENVAT Credit Rules, 2004, @5%/6% of the value of exempted services.

2.5 On the above basis, the department had issued Show Cause Notice (SCN) dated 03.07.2015 read with corrigendum dated 01.09.2015 demanding CENVAT amount of Rs.1,00,83,644/- and its recovery being ineligible CENVAT credit availed during the period June, 2010 to February, 2015 under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(1) of Central Excise Act, 1944 along with interest and for imposition of penalty on the appellants under Rule 15 ibid and Sections 11AA/11AB ibid. The matter arising out of the SCN dated 03.07.2015 was adjudicated vide the impugned order dated 30.06.2016 in confirming the proposed demands

made therein. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate submitted that the appellants received various inputs and input services for manufacture of batteries. The appellants have availed CENVAT credit on such inputs/input services on the strength of invoices raised by the suppliers. Therefore, the appellants have taken CENVAT credit in compliance with the Rule 3 of CCR of 2004. He further submitted that PPCP, which is one of the input, is cleared to various moulders by reversing CENVAT Credit in terms of Rule 3(5) of the CCR. The said reversal of CENVAT credit is also disclosed in the ER-1 Returns filed by the appellants. The Moulders sold back the containers, lids, etc., manufactured out of PPCP to the appellants on payment of Excise Duty. The sale value of PPCP forms parts of the sale price of containers, lids, etc., sold by the Moulders to the appellants. The container, lids and other parts sold back by the moulders are further used by the appellants in the manufacture of batteries, which is cleared on payment of Central Excise Duty. Therefore, there is no non-compliance with the CCR of 2004 by the appellants.

3.2 However, the impugned order had interpreted that the appellants are engaged in trading of PPCP as such inputs were supplied to Moulders on sale basis. Further, it is held that since no separate records have been maintained for inputs/ input services used in trading activity, the appellants are required to either reverse the proportionate credit or pay an amount of 6% of the value of trading activity.

3.3 Learned Advocate submitted, that inputs cleared as such under Rule 3(5) of CCR cannot be treated as trading activity. He submitted that the issue is no longer *res integra* and has been settled in the appellant's own case by the Tribunal. In this regard, he placed reliance on the Order-in-Original No. 21-22/2013-14 dated 28.06.2013 passed for the same unit of the appellants in dispute i.e., Taloja, Maharashtra. Further he also placed reliance on Order-in-Original No. 43/2016 (CE) dated 08.06.2016 passed by Ld. Commissioner (Chennai-III), Central Excise wherein it has been held that PPCP is an input for manufacture of batteries in terms of Rule 2(k) of the CCR.

3.4 He further submitted that the appellants are not engaged in trading of PPCP in the usual course of business. He stated that the supply of PPCP to Moulders on sale basis cannot be viewed in isolation. When the entire transaction is viewed as a whole, sales of PPCP are integrally connected to

the manufacturing process and does not amount to trading. It is a settled position of law that when inputs are cleared as such, under Rule 3(5) of the CCR, said activity cannot be said to be trading of goods. In support of their stand, he relied upon the decision of the Tribunal in the following cases:

(i) Exide Industries Vs. CCE – 2018 (362) ELT 898 (T)

(ii) Exide Industries Vs. Commr. of GST & CE – 2025 (6) TMI 1960 - CESTAT CHENNAI

(iii) Order-in-Appeal No. 77/2017-CE dated 20.12.2017 in the appellant's own case, which was dismissed on monetary limits vide CESTAT Final Order No. 41096-41130/2019 dated 24.09.2019.

(iv) Finolex Industries Ltd. Vs. Commr. of CGST – 2023 (3) TMI 1478 – CESTAT Mumbai

(v) Kairali Steels and Alloys Vs. Commissioner of Tax and Central Excise – 2018 (5) TMI 912 – CESTAT Bangalore

In light of the above, he submitted that no reversal of CENVAT under Rule 6 of CCR is warranted and prayed that their appeal be allowed.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. On careful perusal of the records placed in the case file, it transpires that the undisputed facts of the case are that the appellants are engaged in the manufacture of excisable final products i.e., Electric Storage Batteries and parts thereof and have availed CENVAT credit in terms of Rule 3 of CCR of 2004. Further, the department did not dispute the taking of CENVAT credit by the appellants and the demand of CENVAT credit is not on the ground that Polypropylene Co-Polymer (PPCP) is an ineligible input. It is also a fact that the appellants while clearing PPCP to molding manufacturers/molders, have undertaken reversal of CENVAT credit under Rule 3(5) of CCR of 2004. It is not the case with the department that PPCP were not used in the manufacture of the final products. In the above factual matrix of the case, we do not find that there is a requirement under CCR of 2004, for reversal of credit taken on input services used in relation to those inputs, which are subsequently removed as such by treating the same as 'trading' activity in terms of Rule 6(3)(i) of CCR of 2004.

7. In this regard, we find that the Co-ordinate Bench of the Tribunal in the case of self-same appellants i.e., *Exide Industries Vs. Commissioner of Central Excise* – 2018 (362) E.L.T. 898 (T) have held that the proposal of department for confirmation of the adjudged demands under Rule 6(3)(i) of

CCR of 2004 is not sustainable. The relevant paragraph of the said order is extracted and given below:

> *"**5.** I find that the first appellate authority has totally misdirected his findings on the main plea raised by appellant. Appellant had contended before the first appellate authority that PPCP which is received by them, imported as well as indigenously procured, were inputs as per the findings of the adjudicating authority in the proceedings initiated against the appellant. I find that the Order-in-original No. 22/Taloja/R-VI/COMMR/KA/2013-14, dated 28-6-2013 proceedings were initiated against the appellant to deny them Cenvat credit on PPCP being not an input for the manufacturing activity and by the said order the adjudicating authority has dropped the proceedings initiated. It is informed that the order-in-original, dated 28-6-2013 has been accepted by Revenue and no appeal was filed. If that be the case, claim of the appellant that they had cleared PPCP, the inputs to their vendors on reversal of Cenvat credit correct is and cannot be disputed. If an input is cleared from the factory of the appellant on reversal of Cenvat credit availed on such inputs, the question of invoking the provisions of Rule 6(3A) of the Cenvat Credit Rules, 2004 does not arise as per the ratio laid down by the Tribunal in the case of Commissioner of Central Excise, Ghaziabad v. U P Telelinks [2015 (329) E.L.T. 888 (Tri. - Del.)]."*

Further we also find that in the cases of self-same appellants' unit at Chennai also, the issue was decided in their favour in the case of *Exide Industries Vs. Commissioner of GST & CE* – 2025 (6) TMI 1960 - CESTAT CHENNAI. The relevant paragraph of the said order is extracted and given below:

> *"17. We find it discombobulating that the same adjudicating authority has, despite holding that PPCP received by the appellant and cleared to the moulders are used in the manufacture of containers and lids which in turn are used by the appellant in the manufacture of batteries and thus an input falling under the definition of Rule 2(k) of Cenvat Credit Rules 2004, and further finding that its clearance to the moulders on sale after reversal of cenvat credit has been made by the appellant after rightly paying the amount in terms of Rule 3(5) of CCR on removal of inputs as such from the factory; yet gone on to treat the very same transaction of removal of inputs as such as trading and thus an exempted service!. Moreover, it is also pertinent that the adjudicating authority has not controverted the appellant's contention that the entire quantity of PPCP supplied by the appellant is only to make the parts meant for the appellant and thus no quantity of the PPCP is used by the moulders for any other use and the entire PPCP gets converted and supplied back in the form of battery parts and which was evidenced by the certificate of the moulders produced. The adjudicating authority also has failed to controvert the contention of the appellant that the price at which PPCP is sold to the moulders will ultimately become a cost to the Appellant and the Appellant does not stand to gain any profit, as the price at which PPCP is sold to moulders is built into the price of the containers and lids sold back by the moulders to the Appellant. We also note that the SCN itself does not categorically state that the Appellant is engaged in the business of trading in PPCP and is couched on an inferential basis based on a reply made by the appellant to an enquiry in which reply too the*

appellant has never stated that it is engaged in trading and on the contrary has stated the sequence of transactions that detail how the input is used for the manufacture of the containers which is further used in the manufacture of batteries. Thus, the show cause notice itself is woefully lacking in any evidence to show that the appellant is known in the market as a trader of PPCP or that the appellant sells PPCP to any other customers with a profit motive. The adjudicating authority has thus failed to appreciate that the Department has not let in any evidence that shows that the appellant is in the business of trading in PPCP. In fact, the concatenation of transactions as a whole clearly reveal that it is nothing but removal of inputs on payment of duty by reversal of credit taken, and is in the course of the appellant's activity of manufacture of batteries. It is a settled principle in law that a party cannot approbate and reprobate on the same transaction. Therefore, having found the transaction of sale of PPCP to the moulders by the appellant to be removal of inputs as such from the factory, thereafter, treating the very same transaction of removal of inputs as such, as trading activity cannot be countenanced. We are constrained to fustigate such a dichotomous finding rendered by the adjudicating authority in the impugned order in original, which is appalling to say the least. We are therefore of the considered view that the demand made on the appellant consequent to the finding that the appellant's clearances of Polypropylene Co-Polymer (PPCP) made tantamount to trading, along with applicable interest as well as consequent imposition of equivalent penalty on the appellant are wholly untenable and cannot sustain."

9. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Benches of the Tribunal, on the identical set of facts and in the case of appellants themselves, we find that the issue no more open for debate and contrary view cannot be taken by this Tribunal. Therefore, we find that the impugned order dated 30.06.2016 passed by the Commissioner of Central Excise & Customs, Belapur does not stand the legal scrutiny. Therefore, the adjudged demands along with interest and imposition of penalty on the appellants, in the impugned order is not legally sustainable and thus is liable to be set aside.

10. In the result, the impugned order dated 30.06.2016 is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 19.11.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha