CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85276 OF 2016

[Arising out of Order-in-Appeal No: CD/7/3/M-III/2015 dated 19th October 2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Hawkins Cookers Limited
C-21,22 'U' Road, Wagle Industrial Estate
Thane West - 400604 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
Vardaan Trade Centre, MIDC, Wagle Estate
Thane West - 400604 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Senior Counsel for the appellant

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86840/2025

DATE OF HEARING: 03/06/2025
DATE OF DECISION: 27/11/2025

PER: C J MATHEW

Proceedings were initiated against M/s Hawkins Cookers

Limited for recovery of ₹ 19,54,014, pertaining to November 2008 to February 2011, and ₹ 22,01,035, pertaining to March 2011 to September 2012, respectively under section 11A of Central Excise Act, 1944, along with applicable interest thereon, besides imposition of penalty under rule 15 of CENVAT Credit Rules, 2004 and penalty under section 11AC of Central Excise Act, 1944, that, in order of the original authority, was restricted, insofar as the latter is concerned, to ₹ 9,40,153 even as the rest of the demand was dropped.

2. The appellant, a manufacturer of 'pressure cookers', had, during the period in dispute, also dealt with 'idli stand' which, for the period up to February 2011, was exempted from duty of central excise and, for the period thereafter, eligible to be cleared on payment of duty of 1%/2% subject to non-availment of credit on 'inputs' and 'input service' owing to which it was alleged that, for the former period, the appellant had availed CENVAT credit of services used in common contrary to the stipulation in rule 6 of CENVAT Credit Rules, 2004 for retention of credit and that, for the period of dutiability, they had, by non-reversal of proportion of credit of 'input services' used in common, rendered themselves liable to standard rate of central excise duty. The liability, insofar as non-reversal of CENVAT Credit Rules, 2004 is concerned, was fastened on 'exempted goods' valued at ₹ 3,01,31,440 cleared by appellant which, by application of rule 6(3)(i) of CENVAT Credit Rules, 2004, was crystalised at ₹ 19,54,014. For the period

thereafter, and until discharging of duty at standard rate in October 2012, the entitlement for concessional rate of duty of 1%/2% was denied on clearances valued at ₹ 2,28,19,256.

3. According to Learned Counsel for the appellant, they had agreed to discharge liability as provided for in rule 6(3)(i) of CENVAT Credit Rules, 2004 and to avail the consequential benefit of notification no. 2/2011-CE dated 1st March 2011 and notification no. 19/2012-CE dated 17th March 2012 respectively. He contended that despite such acceptance of such liability, the adjudicating authority proceeded to adjudicate and confirm demand without considering their submission. He further contended that the impugned goods had not been manufactured by them but by contractors and, by no stretch, were manufactured goods cleared by the appellant which was sought to be evidenced by non-recourse to rule 4(5)(a) of CENVAT Credit Rules, 2004.

4. Learned Counsel submitted that appellant could not be compelled to restrict exercise of the options for reversal determined by central excise authorities and that, upon acknowledgement of their right to exercise option, the adjudicating authority should have limited the liability. He submitted that upholding of the detriment determined by the original authority in order[1] of Commissioner of Central Excise

[1] [order-in-appeal no. CD/7/3/M-III/2015 dated 19th October 2015]

(Appeals), Mumbai Zone – III is cause of cavil.

5. Reliance was placed on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise & Customs v. Precot Meridian Ltd 2015 (325) ELT 234 (SC)]* to contend that mode of reversal was option to be resorted to by the assessee. It was further contended that the appellant was entitled to CENVAT credit on the inputs, if recourse was heed to rule 6(3) of CENVAT Credit Rules, 2004, with liability reduced to that extent. Further reliance was placed on the decision of Hon'ble High Court of Calcutta in *Commissioner of Service Tax-I, Kolkata v. Surya Vistacom Pvt Ltd [2022 (66) GSTL 290 (Cal.)]*.

6. According to Learned Authorized Representative, the appellant, as ‘principal manufacturer’ clearing exempted goods for the period prior to February 2011, was, consequently, bound by the prescriptions in rule 6 of CENVAT Credit Rules, 2004. It was further submitted that, for the period thereafter, the appellant had not reversed CENVAT credit attributable to ‘input services’ deployed in common for excisable and exempted goods and, therefore, had not fulfilled the conditions entitling availment of conditional rate of duty.

7. It is common ground that, for the period up to February 2011, ‘idli stand’ were not liable to duties of central excise. It is also common ground that, while raw material have been supplied by the appellant to

'contractor', 'manufacturing' was not carried out by the appellant. In these circumstances, the question arises as to designating the relationship between the appellant and the 'contractor' as 'job-worker' which is the primary plank of central excise authorities in these proceedings. To be a 'job-worker', it is of essence that the contractual arrangement with the principal manufacturer includes assumption of responsibility by the latter for discharge of duty liability on goods produced by the former. In circumstances of non-leviability of duties of central excise on the product, 'job worker' is superfluous and the default provisions render actual producer to be the manufacturer. Accordingly, it cannot be said that the exempted goods cleared by the 'contractor' to the appellant was liable to excise duty and could be deemed as 'input' procured for clearance of exempted goods in terms of rule 2 of CENVAT Credit Rules, 2004. For the period up to February 2011 'idli stand' not 'exempted goods' cleared by 'contractor' and, consequently, the appellant was not subject to the stipulated restriction on retention of credit, pertaining to 'input services' deployed in common, by rule 6 of CENVAT Credit Rules, 2004.

8. As far as clearance after February 2011 is concerned, it is not the case of the appellant that they had not been discharging duty liability; duties of central excise were being discharged by the appellant and, consequently, the contractor manufacturing the goods were 'job-worker' of the appellant. The goods brought to the factory of the

appellant were being cleared thereafter on payment of duty. The issue in dispute is the alleged non-compliance with the conditions for availment of concessional rate of duty. With the appellant volunteering to discharge liability in terms of rule 6(3) of CENVAT Credit Rules, 2004, the dispute was erased and the claim of the appellant that their submissions of having discharged such liability, with attendant entitlement to alternative exemption, had not been considered by the original authority. It is evident that, in terms of the decision of the Hon'ble Supreme Court in *re Precot Meridian Ltd*, option of mode of reversal should be at the behest of the assesse. This was further reiterated in the decision of the Tribunal in *Agrawal Metal Works Pvt Ltd v. Commissioner of GST, Alwar [2022 (65) GSTL 372 (Tri.-Del.)]*, thus

> *'10. It is undisputed that the appellant has been manufacturing goods on job work basis and has been clearing them without paying duty as per the Notification No. 214/86-C.E., dated 25-3-1986. If the activity amounted to manufacture - which has not been disputed by the Revenue at all in the past - it cannot also simultaneously become a service. If the processes undertaken by the appellant on job work did not amount to manufacture and was only a service, Revenue should have said so while assessing its central excise returns. Revenue should have informed that the appellant that it was not liable to pay any central excise duty at all and there was no need to claim the benefit of exemption Notification No. 214/86-C.E., dated 25-3-1986. Having accepted the excise returns claiming the process to be manufacture and knowing*

that the appellant was claiming the exemption notification from Excise duty, Revenue cannot at the same time take a stand that the processes amount to rendering a service and that such service was an exempted service. If Revenue was of the opinion that it's original position was not correct and no manufacture was involved at all in the process undertaken by the appellant it should have brought out cogent reasons for holding so. Therefore, there is no basis for the allegation in the show cause notice that the appellant was rendering an exemption service when it was manufacturing dutiable goods.

11. Further, we find that the demand has been made under Rule 6(3) of CCR, 2004. It has been held by the Hon'ble High Court of Andhra Pradesh and Telangana in the case of Tiara Advertising v. Union of India [2019 (30) GSTL 474 (Telangana)] that the various options under Rule 6 are options given to the assessee and the Revenue cannot choose one of the options and force it upon the assessee. Even if the assessee is rendering exempted services or manufacturing exempted goods and using common input services no demand can be sustained under Rule 6(3) as this is only one of its options available to assessee to fulfil its objection. Relevant portion of the judgment of Hon'ble High Court are reproduced below :-

> *"7. Rule 6 of the Cenvat Credit Rules, 2004 deals with the obligations of a provider of taxable and exempted services. Rule 6(1) states that Cenvat Credit shall not be allowed on inputs/input services exclusively used for providing exempted services. Rule 6(2) provides that if inputs or input services are used for provision of output services which are chargeable to duty or tax as well as exempted services, then separate accounts are to be maintained for receipt, consumption and inventory of inputs and receipt and use of input services and the provider shall take credit only on inputs used for dutiable output services. Rule 6(3) of the Cenvat Credit Rules, 2004 is relevant for the purpose of this case and states to the effect that a provider of output services who opts not to maintain separate accounts, as required under Rule 6(2), should follow any one of the options provided under Clauses (i) to (iii) thereunder, as applicable to him. Clause (i) provides for the option of paying an amount equal to 5% of the value of the*

exempted services. Pursuant to Notification No. 18/2012, dated 17-3-2012, the amount to be paid under Clause (i) was increased to 6% with effect from 1-4-2012.

xx xx xx

9. It may be noted that there is no controversy with regard to the entitlement of the petitioner to avail Cenvat Credit but for this disputed amount of Rs. 17,15,489/- out of the total extent of Rs. 1,41,51,903/-. While so, the second respondent issued show cause notice dated 19-4-2016 to the petitioner proposing to choose the option under the aforestated Rule 6(3)(i) on its behalf and calling upon it to explain as to why it should not be directed to pay an amount of 5%, upto 31-3-2012, and 6%, from 1-4-2012, of the value of the exempted services, aggregating to Rs. 3,52,65,241/-. In its reply dated 16-5-2016, the petitioner contended that it was wholly unreasonable on the part of the authorities to expect it to pay over Rs. 3.50 Crore when the total Cenvat Credit availed by it was less than Rs. 1.50 Crore and the actual dispute boiled down to a mere Rs. 17,15,489/-. It relied on case law to support its contention that such an unreasonable result could not be allowed to follow by application of the law. The impugned Order-in-Original however reflects that the second respondent did not even advert to the case law cited before him.

14. Further, we may reiterate that Rule 6(3) of the Cenvat Credit Rules, 2004, merely offers options to an output service provider who does not maintain separate accounts in relation to receipt, consumption and inventory of inputs/input services used for provision of output services which are chargeable to duty/tax as well as exempted services. If such options are not exercised by the service provider, the provision does not contemplate that the Service Tax authorities can choose one of the options on behalf of the service provider. As rightly pointed out by Sri S. Ravi, Learned Senior Counsel, if the petitioner did not abide by the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, it was open to the authorities to reject its claim as regards the disputed Cenvat Credit of Rs. 17,15,489/-.

15. We may also note that in the event the petitioner was found to have availed Cenvat Credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilised wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-in-Original, to the extent that it proceeded on these lines, therefore cannot be countenanced".

> *12. Thus, the demand of an amount under Rule 6(3) of CCR cannot be sustained even if the appellant was rendering exempted services and had taken Cenvat credit on common inputs/input services. The impugned order, therefore, cannot be sustained and is liable to set aside.'*

9. The fastening of liability for the subsequent period on appellant without considering their submissions, vitiates the impugned order. Accordingly, and to that extent, the dispute is remitted back to the original authority for a fresh decision.

10. In view of the above, the recovery ordered for the period up to February 2011 is set aside absolutely and entirely, and for the period thereafter, subject to the submissions of the appellant herein, is to be recomputed and other consequential detriments to be re-determined in terms of settled law and provisions of rule 15 of CENVAT Credit Rules, 2004.

(Order pronounced in the open court on 27/11/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*