

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

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 85935 of 2016**

(Arising out of Order-in-Original No. 21/COMMR/M-III/SR/2015-16 dated 13.01.2016 passed by the Principal Commissioner of Central Excise, Mumbai-III)

**M/s Lumis Biotech Pvt. Ltd.**

B-90, Wagle Industrial Estate,  
Road No. 12, Thane - 400 604

**.... Appellant**

Versus

**Commissioner of Central Excise, Mumbai-III**

3<sup>rd</sup> & 4th Floor, Vardaan Centre,  
MIDC, Wagle Industrial Estate,  
Thane (West) - 400 604

**.... Respondent**

APPEARANCE:

Shri Vinay S Sejpal, Advocate for the Appellant

Shri Ranjan Kumar, 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/87009/2025**

Date of Hearing: 10.12.2025

Date of Decision: 10.12.2025

**PER: S.K. MOHANTY**

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellant is engaged in the manufacture of "Enzymes", falling under Chapter sub-heading 3507 9010 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant also manufactures the exempted goods i.e. "Preparation of Kind used in Animal Feed" classifiable under Chapter sub-heading 2309 9090. The appellant avails CENVAT Credit of Central Excise duty paid on the inputs and service

tax paid on the input services. During the disputed period, the appellant had availed CENVAT Credit of Central Excise duty paid on the Furnace Oil for generation of steam. Since the generated steam was used both for manufacture of excisable as well as the exempted goods, the Department had proceeded against the appellant for payment of 5%/6% of the sale price of exempted goods. The appellant had contested the show-cause notice on the ground that it had reversed the proportionate CENVAT Credit used in the manufacture of exempted goods and that such reversal is in conformity with Rule 6(3)(ii) of the CENVAT Credit Rules, 2004. However, the submissions made by the appellant were not accepted by the Department on the ground that it had not filed any intimation before the Department, opting for availment of the benefit under the said rule. The show-cause notice issued in this regard by the Department was adjudicated by the Principal Commissioner, Central Excise, Mumbai-III, vide the impugned order dated 13.01.2016 in confirming the proposals made in the show-cause notice dated 19.03.2015. Feeling aggrieved with the impugned order dated 13.01.2016, the appellant has preferred this appeal before the Tribunal.

3. On examination of the case records, more particularly, the impugned order dated 13.01.2016, we find that the original authority had not disputed the fact of reversal of the CENVAT Credit by the appellant in respect of Furnace Oil used in the manufacture of exempted goods. Since such reversal is in compliance with the provisions contained in Rule 6(3)(ii) of the Rules of 2004, confirmation of the adjudged demands, by applying the provisions of Rule 6(3A) (a)(i) *ibid* is not proper and justified. The Department had mainly proceeded against the appellant for confirmation of the adjudged demands on the ground that no intimation was filed before the jurisdictional Central Excise officer, informing the availment of the option provided thereunder. Since reversal of amount in respect of the inputs used in the exempted goods was not specifically objected to by the Department, mere non-filing of intimation will not hold good for confirmation of such demand. Therefore, we are of the view that non-filing of intimation is a procedure infraction, for which the substantive right of CENVAT Credit cannot be whittled down.

4. In view of the above, we are in agreement with the submissions made by the appellant that it had complied with the requirement of Rule 6(3)(ii) *ibid*. Therefore, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellant. Accordingly, the impugned order is set aside and appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**

Sinha