

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Excise Appeal No. 51633 of 2019 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-052-19-20 dated 31.05.2019 passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Indore]

M/s.Sundaram Packaging India Pvt.Ltd.

...Appellant

Plot No.111 to 122 & 123 to 129
Sector-III, Pithampur,
Dist. Dhar (M.P.)

VERSUS

**Commissioner of Customs,
CGST & Central Excise, Ujjain**

...Respondent

APPEARANCE:

None appeared for the Appellant
Shri P. Juneja & Shri P.Gupta, Authorised
Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : **19/03/2021**

DATE OF DECISION: **01/04/2021**

FINAL ORDER NO. 51210/2021

RACHNA GUPTA:

Appellant herein M/s.Sundaram Packaging India Pvt. Ltd. is engaged in manufacture of PP woven fabrics and are also the recipient of few services as that of Goods Transport Agency Service, Manpower Recruitment Agency Service and Legal Consultancy Service etc. They were also availing the benefit of Cenvat Credit on inputs, input services and capital goods under Cenvat Credit Rules, 2004. During the course of audit for the period 2016-17,

Department noticed that appellant had cleared empty polythene bags of raw-material, empty drum of power oil worth Rs.33,62,307/- in the name of waste sales without payment of duty, despite that the goods so cleared were non-excisable. Relying upon the Notification No.06/2015 dated 01.03.2015 which says that any non-excisable goods cleared from the factory will be treated as exempted goods and Cenvat Credit will be reversed on the same as per Rule 6 (3) of Cenvat Credit Rules. Accordingly, vide Show Cause Notice No.1729 dated 18.07.2018 the appellant was required to reverse the amount at the rate of 6% of the value of goods so cleared alongwith applicable interest and penalty. This proposal was initially confirmed by Order-in-Original No.32/AC/2018-19 dated 20 February, 2019. The appeal thereof was rejected vide Order-in-Appeal No.052-19-20 dated 31.05.2019. The said order has been assailed by the appellant before this Tribunal.

2. At the time of final hearing, the appellant has not appeared in person. However, he mailed a written request for deciding the appeal on merit on the basis of submissions made in Appeal Memo. The appellant has also mailed the order of the same Commissioner (Appeals), as the one who has passed the impugned order, related to the same jurisdiction wherein the appellant was authorised Consultant. The same Commissioner in appeal vide the said order passed subsequently, has held that 6% amount is not required to be paid in case of sale of discarded scrap, i.e. used empty drums and empty bags. The copy of said order dated 16.09.2019 is annexed with the said request.

3. Learned D.R. on the other hand has impressed upon the amendment as has come into effect in Rule 6 of Cenvat Credit Rules, 2004 vide Notification No.6/2015 dated 01.03.2015 vide which the explanation (1) to Rule 6 has specifically mentioned that exempted goods or final products shall include non-excisable goods cleared for a consideration from the factory. Impressing upon that the drums and wax as cleared by the appellant are non-excisable goods which have been cleared for consideration, as such, there is no infirmity in the Order under challenge. Appeal is prayed to be dismissed.

4. After hearing the Departmental Representative and perusing the grounds of appeal in the Appeal Memo as well as the Order dated 16.09.2019 as has been mailed to the Tribunal, I observe and hold as follows:-

The Show Cause Notice as well as the orders of the adjudicating authority below have stated that provision of Rule 6 (3) of Cenvat Credit Rules, 2004 are attracted and accordingly the appellant has been asked to pay an amount of 6% of the value of empty drums and bags cleared from the factory. Accordingly, the moot issue to adjudicate is as to whether Rule 6(3) of CCR, 2004 is applicable to the given facts and circumstances. The Rule recites as follows:-

[(3) (a) A manufacturer who manufactures two classes of goods, namely:-

(i) non-exempted goods removed;

(ii) exempted goods removed;

OR

(b) a provider of output service who provides two classes of services, namely:-

- (i) non-exempted services;*
- (ii) exempted services,*

Shall follow any one of the following options applicable to him, namely:-

[(i) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]

(ii) pay an amount as determined under sub-rule 3 (A) ;

4.1 The perusal thereof makes it abundantly clear that Rule 6(3) is applicable only to the manufacturers that too those who manufacture two classes of the goods i.e. non-exempted and exempted goods. Apparently and admittedly the appellant herein is manufacturing only one kind of goods which is PP woven fabric. Admittedly the empty polythene bags of raw-material and the empty drums of power oil as have been cleared by the appellant, irrespective for consideration, are not the goods manufactured by the appellants. No doubt there has been an amendment in the aforesaid Rule w.e.f. 01.03.2015 by virtue of Notification 06/2015 and the following explanation has been inserted:-

" (1) The CENVAT credit shall not be allowed on such quantity of inputs in or in relation to the manufacture of exempted goods or for provision of exempted services, or input services used in or in relation to the manufacture of exempted goods and their

clearance upto the place of removal for provision of exempted service except in the circumstances mentioned in sub-rule (2)

8.1 This rule was amended w.e.f. 01.03.2015 by inserting:

Explanation 1: - For the purpose of this rule, exempted goods or final products as defined in clause (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory."

Explanation 2: Value of non-excisable goods for the purpose of this rule, shall be the invoice value & where such invoice value is not available such value shall be determined by using reasonable means consistent with the principles of valuation contained in Excise Act & Rules made thereunder."

4.2. I observe that irrespective of the said amendment, scope of Rule 6 is still with respect to the inputs/inputs services used in or in relation to the manufacture of exempted goods along with manufacture of non-exempted goods. Hence, irrespective, exempted goods include non-excisable goods in view of the amendment in terms of Notification No. 6/2015 dated 01.03.2015 unless and until such exempted goods are manufactured that too alongwith the non-exempted goods by the assessee, applicability of Rule 6 does not at all arise. No question of applicability of the explanation thereof as inserted vide Notification of 2015 also at all arises. There has already been the decision of the apex Court in the case of **Union of India vs. DSCL Sugar Ltd. reported in 2015 (322) ELT 769 (S.C.)** that the products which do not qualify the definition of manufacture in Section 2 (f) of Central Excise Act, there cannot be any excise duty for such products . Earlier also the Hon'ble Apex Court in the case of **Westcost Industrial Gases Ltd. reported in 2003 (155) ELT 11**, it was held that no duty

could be demanded on the containers used for packing of inputs on which credit has been taken, when cleared from the factory of the manufacturer availing credit as these containers could not be treated as waste arising out of manufacturing process. Relying upon the said decisions and the above discussion about invocability of Rule 6 of CCR, 2004, I hold that the said Rule has wrongly been invoked in case of the appellant for demanding the reversal of Cenvat Credit availed by him at the rate of 6% of the value of empty packets of raw-material and empty drums of the oils used by the appellant in manufacture of PP woven fabric when cleared for consideration. Commissioner (Appeals) is rather observed to have gone contrary to the allegations holding that these bags and drums are admitted by the appellant to be excisable goods. Hence, these findings are not correct.

5. In view of entire above discussion, the order as such is not sustainable in the eyes of law, same is accordingly hereby set aside. Resultantly, the appeal stands allowed.

[Order pronounced in the open Court on 01/04/2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita