

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10100 of 2020

(Arising out of OIA-VAD-EXCUS-001-APP-471-2019-20 dated 29/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

CADILA HEALTHCARE LTD

Plot No. 26-29 & 31, Dabhasa- Umaraya, Vill: Dabhasa, Tal: Padra
Vadodara
Vadodara, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-VADODARA-I

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

.....Respondent

APPEARANCE:

Shri Mitesh Jain, Advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 10731 /2022

DATE OF HEARING: 14.06.2022
DATE OF DECISION: 24.06.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is required to pay an amount of 6% in terms of 6(3) of the Cenvat Credit Rules, 2004 on empty packaging drums of cenvatable input considering the same as non excisable goods.

2. Shri Mitesh Jain, learned chartered accountant appearing on behalf of the appellant submits that the adjudicating authority and Commissioner (Appeals) confirmed the demand considering the drum as non excisable goods. He further submits that the empty drums are not generated during the process of manufacture it is cleared after emptying the inputs therefore, the drums are cleared as such and the same is not liable for payment under Rule 6(3). He placed reliance on this tribunal's judgment in the case of M/s Banco Gasket I Ltd vs. CCE &ST- 2021 8 TMI 77

3. Shri Vinod Lukose, Learned Superintendent (AR) reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that the lower authorities have confirmed the demand only on the ground that empty drums of cenvatable input is a non excisable goods and therefore, the clearance there of will attract 6% reversal in terms of rule 6(3) of Cenvat Credit Rules, 2004. On the identical issue this Tribunal has passed the following order in the case of Banco Gasket I Ltd

"4. I have carefully considered the submissions made by both the sides and perused the records. I find that the Show Cause Notice was issued demanding the amount equal to 6% of the value of packaging material cleared by the appellant. The said packaging material is nothing but an empty packaging material in which input was received by the appellant. Therefore, it is the fact that the said packaging material is not arising out of manufacture process of any final product. The Show Cause Notice also invoked Explanation (1) & (2) of Rule 6(1) of Cenvat Credit Rules which is reproduced below:-

"Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (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 purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under."

On plain reading of the above explanation, I find that as per explanation (1) only goods which are defined under clause (d) and (h) of Rule 2 could be covered for the purpose of demand under Rule 6(3), for ease of reference clause (d) and (h) of Rule 2 are reproduced below:-

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excisable leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [and goods in respect of which the benefit of an exemption under Notification NO.1/2011-CE, dated 1-3-2011 or under entries at S. Nos. 67 and 128 of Noti. No. 12/2012-CE dt. 17-3-2012 is availed];

(h) "final products" means excisable goods manufactured or produced from input, or using input service;

On plain reading of the above definition of 'exempted goods' as well as 'final product,' it is clear that the said goods should be arising out of the manufacturing activity even though after that the said goods may or may not be excisable goods. In the present case, the packaging material since not arising out of any manufacturing process the same will not fall either under Sub-clause (d) or sub-clause (h) of Rule 2 of Cenvat Credit Rules, 2004. As regard explanation (2), it is only for the purpose of value of the non-excisable goods to calculate the payable amount under Rule 6(3). Since the goods does not fall under the explanation (1),

explanation (2) will obviously not be applicable therefore, the charges made in the Show Cause Notice are not tenable.

4.1 Further, I find that an identical case has been considered by the Hon'ble Supreme Court in the case of WEST COAST INDUSTRIAL GASES LTD.(supra) wherein, their lordships passed the following order:-

"3.In our view, the said reasoning cannot be said to be, in any way, erroneous. There is no specific rule levying duty on such drums/barrels/ containers.

4.On this aspect, learned counsel for the assessee pointed out that the Government of India, Ministry of Finance (Department of Revenue), has specifically issued a circular dated 5th September, 1996, inter alia, stating as under :-

The matter has been examined, container cannot be treated as inputs. Credit taken under Modvat is with reference to the duty on inputs and not on the containers, notwithstanding the fact that the value of the inputs may include the value of containers and the duty on the inputs may be on "2. ad valorem basis. It is, therefore, clarified that no duty would be payable when such empty containers are cleared from the factory."

5.Thereafter, on the basis of the decision rendered by the CEGAT, a circular was issued on 23rd March, 1999, wherein it has also been observed as under :-

The matter has been examined by the Board. In view of the above CEGAT judgment, it has been decided not to demand duty on waste packages/containers used for packaging modvatable inputs "2. when cleared from the factory of the manufacturer availing of Modvat credit and to follow the CEGAT decisions."

6.It is true that after the issuance of the aforesaid circular as appeal was filed before this Court, the third circular was issued on 19th July, 1999 to the effect that as the Department has filed an appeal against the order of the CEGAT and as it is admitted by this Court, it has been decided by the Board to withdraw the Circular dated 23rd July, 1999. It appears that while issuing the circular dated 19th July, 1999, the concerned authority has not applied its mind to the ratio laid down by the CEGAT in OIL's case (supra) wherein it has been pointed out that there is no specific provision under the Rules considering such barrels/drums as a waste arising out of manufacturing process. In this view of the matter, this appeal is dismissed. There shall be no order as to costs.

Civil Appeal Nos. 3877-3881, 6775-79, 6780-81/99, 2173-2176, 4010/ 2001, 300-301, 2804, 4367, 5601, 8597-98/2002 and 1421/2003 :

7.In view of the above order, these appeals are also dismissed. There shall be no order as to costs."

In view of the above judgment, it is clear that the empty packaging material wherein, the input was received, the removal of the same will not attract any duty. The Hon'ble Allahabad High Court in the case of BALRAMPUR CHINI MILLS LTD. v/S. UNION OF INDIA (supra) on the identical issue it was held as under:-

"34. In light of the above we are of the considered opinion that in absence of Bagasse being a manufactured final product, the obligation of reversal of Cenvat Credit under Rule (1) of the Cenvat Credit Rules, 2004 is not attracted, and the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India and others v M/s. DSCL Sugar Ltd and Others (supra) still holds the

field. Rule 6 of the Cenvat Credit Rules would have no application for reversal of Cenvat Credit in relation to Bagasse. The Circular No. 1027/15/2016-CX, dated 25-4-2016, contained in Annexure-1 to the writ petition to the extent that it includes Bagasse under the purview of the reversal of credit of input services in terms of Rule 6 of the Cenvat Credit Rules, 2004, as well as the impugned show cause notice dated 24-3-2017 contained in Annexure-2, are hereby quashed.”

In view of the above judgment of the Hon’ble Allahabad High Court which has taken note of Hon’ble Supreme Court judgment in the case of UNION OF INDIA v/S. DSCL SUGAR LTD. (supra), even though the agricultural waste and residue emerged from the manufacture of sugar, it was held that demand under Rule 6(1) shall not sustain.

5. As per my above discussion and findings which is supported by the judgments cited (supra), I am of the view that in the facts of the present case the demand under Rule 6(3) is not sustainable. Accordingly, the impugned order is set aside, appeal is allowed.”

From the above judgment it can be seen that the very identical issue has been considered and categorically held that empty packaging material of cenvatable input is not liable for payment either as excise duty or as cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004.

5. Considering the above judgment, I hold that the appellant is not liable to make any payment on clearance on empty drums. Hence, the impugned order is set aside, appeal is allow.

(Pronounced in the open court on 24.06.2022)

**RAMESH NAIR
MEMBER (JUDICIAL)**