CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1498 OF 2012
WITH
CROSS OBJECTION NO: 150 OF 2012

[Arising out of Order-in-Appeal No: BK/1/LTU/MUM/2012 dated 13th July 2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai.]

Reliance Industries Ltd
Village Meghpar/Padana Motikhavdi
Tal: Lalpur, Dist: Jamnagar – 361142 … ***Appellant***

versus

Commissioner of Central Excise
LTU, 2nd Floor, World Trade Centre, Cuffe Parade
Mumbai - 400005 ***…Respondent***

APPEARANCE:

Shri Ramnath Prabhu and Shri Anil Balani, Advocates for the appellant

Shri Dhirendra Kumar, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A /85909/2022

DATE OF HEARING: 26/09/2022
DATE OF DECISION: 26/09/2022

PER: C J MATHEW

This appeal lies against order-in-appeal no. BK/1/LTU/MUM/2012 dated 13th July 2012 of Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai holding that the appellant, M/s Reliance Industries Ltd, was ineligible for refund of amounts that had, inadvertently, been reversed in CENVAT credit account under rule 6(3A) of CENVAT Credit Rules, 2004 between April 2010 and March 2011.

2. Briefly, the credit to the extent of ₹ 3,18,04,141/-, comprising ₹74,27,104 that had been reversed/paid on 'inputs' attributable to 'liquefied petroleum gas (LPG)' cleared by them and ₹ 2,43,77,037 that, in accordance with the formula prescribed in rule 6(3A)(c)(iii) of CENVAT Credit Rules, 2004 was excluded from computation of eligible balance, has, according to Learned Counsel for appellant, been improperly denied to them as is evident from the decision of the Hon'ble High Court of Gujarat in *Principal Commissioner of Central GST and Central Excise v. Reliance Industries Ltd [R/Tax appeal no. 219 of 2022 in order dated 5th May 2022]* upholding the order of the Tribunal in *Commissioner of Central Excise & Service Tax, Rajkot v. Reliance Industries Ltd [final order no. A/12439-12440/2021 dated 11th October 2021 disposing of appeals of Revenue against order-in-appeal no. RAJ-EXCUS-000-APP-132-133-2019 dated 27th June 2019 of Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax, Rajkot*] and in *Commissioner of Central Excise &*

Service Tax v. Reliance Industries [final order no. A/1268-12630/2021 dated 20th December 2021 disposing off appeal no. E/11695/2017 against order-in-appeal no. SK-20-22-LTU-MUM-1017-18 dated 8th June 2017 of Commissioner of Central Excise, Customs and Service Tax (Appeals), Mumbai – I.

3. We have heard Learned Authorised Representative.

4. The appellant is a manufacturer of excisable goods and had availed credit under CENVAT Credit Rules, 2004 on eligible 'inputs' used in the manufacture of excisable goods but, under the impression that 'liquefied petroleum gas (LPG)', exempted by notification no. 4/2006-Central Excise Act, 1944 dated 1st March 2006 when cleared for use under the 'public distribution system (PDS)' were 'exempted goods' within the meaning of rule 2(d) of CENVAT Credit Rules, 2004, reversed such proportion and also excluded it for the computation prescribed in rule 6(3A) of CENVAT Credit Rules, 2004. According to the appellant, the goods so cleared were not 'exempted goods' as the issue of it being so had, in the case of the appellant themselves, been decided otherwise by the Tribunal to hold that

> *'4.6 The identical issue has been considered by the jurisdictional Hon'ble Gujarat High Court in the case of Sterling Gelatin reported in 2011 (270) ELT 200 (Guj.) wherein in the issue before the Hon'ble Court was that*

whether the assessee was required to pay an amount of 8%/10% of the value of exempted goods under Rule 6 (3) (b) of the CCR, as one of the inputs namely Hydrochloric acid was used in the manufacture of dutiable goods (Gelatin) as well as for manufacture of exempted goods Dicalcium Phosphate and the assessee was not maintaining separate account under rule 6(2) of CCR,2004. The Hon''ble Gujarat High Court after examining the provision of Cenvat scheme and the argument that the assessee therein could not have manufactured Gelatin using a lesser quantity of Hydrochloric acid held that rule 6 (1) of the CCR itself would not come into play. The relevant observation of Hon'ble High Court is reproduced below:-

> *"6. The undisputed facts of the case are that for the purpose of manufacture of Gelatin, cleared bone chips are charged to acidulation vats with the help of conveyors. Each vat is filled with pre-determined quantity of bone chips and then soaked with Hydrochloric Acid. The bones contain mineral matter like Phosphate Salts. The Hydrochloric Acid leaches out the phosphates forming Mono Calcium Phosphate. The phosphate solution commonly known as Mother Liquor is pumped out of the acidulation vats into precipitation tanks where lime solution is added which reacts with Mono Calcium Phosphate converting it into Di-Calcium Phosphate. Insofar as manufacture of Gelatin is concerned, after removal of Mother Liquor the demineralised bones are hydraulically transported to the washing section and thereafter processed further to manufacture Gelatin. The above manufacturing process shows that while soaking the bone chips in Hydrochloric Acid a waste product, viz., Mother Liquor ipso facto comes into existence. It is not as if there is a deliberate attempt on the part of the manufacturer to manufacture the Mother Liquor which emerges as a by-product during the course of manufacture of Gelatin. Moreover, it is not as if a particular quantity of Hydrochloric acid is used for the manufacture of Gelatin and a particular quantity is used for the production of Mother Liquor (whether ascertainable or unascertainable), the entire quantity of Hydrochloric acid in respect of which cenvat credit is availed of is used by the respondent for the manufacture of Gelatin. Considering the process of manufacture adopted by the respondent, it is not possible to manufacture Gelatin without corresponding production of Mother Liquor. This Mother Liquor which otherwise is in the nature of a waste product, is used by the respondent assessee*

for the manufacture of Di-Calcium Phosphate.

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8. Thus, on a plain reading sub-rule (1) of Rule 6, it is apparent that CENVAT credit is admissible in respect of the inputs used in the manufacture of dutiable goods and is inadmissible on such quantity of inputs which is used in the manufacture of exempted goods. Sub-rule (2) imposes an obligation on the manufacturer who manufactures final products and exempted goods from the common input to maintain separate accounts for receipt, consumption and inventory of inputs. Examining the applicability of the aforesaid rules to the facts of the present case, as noted hereinabove, it is not as if more quantity of Hydrochloric Acid is used than that required for manufacturing Gelatin or that by using a smaller amount of Hydrochloric Acid, the production of Mother Liquor could be averted. In the manufacturing process adopted by the assessee, it is not possible to manufacture Gelatin without Mother Liquor coming into existence. Thus, when the entire quantity of input viz. Hydrochloric Acid is used in the manufacture of the final product being Gelatin which is a dutiable product, the mere fact that a by-product emerges during the process would not bring the by-product within the ambit of Rule 6 of the Rules so as to call for maintaining separate accounts in respect of the same. When the entire quantity of input is used in the manufacture of Gelatin, the question of maintaining separate accounts or of paying a percentage of the total price of the exempted goods would not arise. In the peculiar facts of the present case, sub-rule (1) of Rule 6, itself would not come into play inasmuch the manufacturer does not deliberately use any quantity of the inputs, viz. Hydrochloric Acid for manufacturing Mother Liquor, the entire Hydrochloric Acid is used in the manufacture of Gelatin. Thus, when no input is specifically used for the purpose of manufacturing Di-Calcium Phosphate, there would be no question of maintaining separate accounts for receipt, consumption and inventory of input.

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10. In the facts of the present case, it is not as if by using a smaller quantity of input Hydrochloric Acid, the respondent could have averted the emergence of Mother Liquor. In other words, in the technology utilized by the respondent for the manufacture of Gelatin, the emergence of Mother Liquor was inevitable. Hence, while it is no doubt correct to say that Hydrochloric Acid has been used in or in relation to manufacture of Mother Liquor, the identical quantity of the same goods has simultaneously been used in the manufacture of Gelatin. The emergence of Mother Liquor during the course of manufacture of Gelatin, therefore, by itself is not a ground to invoke the provisions of Rule 6 of the Rules.

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12. On behalf of the appellant it has been submitted that common input Hydrochloric Acid was used in the manufacture of both Gelatin as well as Di-Calcium Phosphate hence, in the light of the provisions of Rule 6(2) of the Cenvat Credit Rules, 2002, the respondent was required to maintain separate accounts for receipt, consumption and inventory of input meant for use in the manufacture of dutiable final products and the quantity of input meant for use in the manufacture of exempted products and take cenvat credit only on that quantity of input which was intended for use in the manufacture of dutiable goods. In the present case, the assessee has taken cenvat credit only on that quantity of input, which was intended for use in the manufacture of dutiable goods, therefore, also the question of invoking sub-rule (2) of Rule 6 of the Rules would not arise.

13. Insofar as reliance placed upon the decision of the Bombay High Court in the case of Commissioner of Central Excise, Thane-1 v. Nicholas Piramal (India) Ltd. (supra) is concerned, the same would have no applicability to the facts of the present case inasmuch as in the facts of the said case, common input had been consciously used in the manufacture of two final products, whereas in the facts of the present case, the input Hydrochloric Acid is used for the manufacture of Gelatin alone, however during the course of manufacturing process a by-product viz. Mother liquor also emerges.

14. In the light of the view taken by the Court, it is immaterial as to whether or not the new applicable rules, viz., Cenvat Credit Rules, 2002/2004 contain any provisions akin to Rule 57CC and Rule 57D of the erstwhile Central Excise Rules, 1944."

Applying the ratio the above judgment which directly applicable to the facts of the present case for the reason that in the aforesaid judgment the appellant intended to manufacture gelatin as the main product and exempted goods i.e. Dicalcium Phosphate generated unavoidably in the course of manufacture of gelatin same quantum of input and input services used for manufacture of gelatin. In the present case the entire quantity of input and input services was used for manufacture of dutiable products namely motor sprit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. only because of generation of LPG the

quantum of input and input services used for manufacture of motor sprit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. does not get reduced that same entire quantity of input and input services has been used in manufacture of dutiable goods even though the LPG is generated in the stream of entire manufacture process. The Cenvat credit of only such quantity of input and input services to be denied which is not used in the manufacture dutiable goods but in the present case there is no dispute that the entire quantity of input and input services has been used for manufacture of dutiable goods therefore even though the LPG arising in the course of manufacture only because of that it cannot be said that there is reduction in the quantity of input and input services used in the manufacture dutiable goods.

4.7 The similar issue has been considered by Hon"ble Supreme Court in the case of National Organic Chemical Industries Limited-2008 (232) ELT 193 (S.C), in that case exemption under notification No. 217/86-CE dated 02.04.1986 was available to ethylene and propylene (falling under chapter 29) when captively used in the process cracking raw naphtha for the manufacture of ethylene and propylene. In the process cracking methane and ethane falling under chapter 27 also manufactured. As per the said notification such exemption was not available to ethylene and propylene used in the manufacture of goods falling under chapter 27 namely methane and ethane. In other words excise duty was to be paid for such quantity of ethylene and propylene inputs which captively consumed and used in the manufacture of product falling under chapter 27 namely methane and ethane. The Hon"ble Supreme Court held that the emergence of ethane and methane in the process of manufacturing ethylene and propylene was inevitable therefore no ground for denying the exemption. It was held

that the assessee could not have manufactured ethylene and propylene without manufacturing ethane and methane and in any technology the emergence of ethane and methane was inevitable. It was also held that since the identical quantity of ethylene and propylene was used in the manufacture of ethane and methane, it cannot be said that benefit of exemption was not available the relevant observation of Hon"ble Supreme Court in this regard is as follows.

> *"19. The respondent assessee submitted that there was no way by which the respondent could have manufactured ethylene and propylene without producing ethane and methane. It is not as if by using a smaller quantity of raw material or other goods involved in the process, the respondent could have averted the emergence of ethane and methane. In other words, in the technology utilized for the manufacture of ethylene and propylene, the emergence of ethane and methane was inevitable. Hence, while it is no doubt correct to say that the ethylene and propylene have been used in or in relation to the manufacture of ethane and methane, the identical quantity of the same goods has simultaneously been used in the manufacture of ethylene and propylene. The emergence of ethane and methane is, therefore, by itself is not a ground to deny the benefit of the exemption notification.*
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> ……
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> *30. We have heard the learned counsel for the parties at length and perused the judgments cited at the Bar. The Tribunal's finding that the ethylene and propylene used as refrigerant has been used in or in relation to the manufacture of the same goods. The inevitable and automatic emergence of ethane and methane, therefore, by itself is no ground for denying the exemption contained in the notification. The Tribunal came to the categoric finding that the respondent could not have manufactured ethylene and propylene without manufacturing its by-products ethane and methane. The Tribunal held that in any technology the emergence of ethane and methane was inevitable and hence while it is no doubt correct to say that the ethylene and propylene have been used in or in relation to the manufacture of ethane and methane, the identical quantity of the same goods has simultaneously been used in the manufacture of ethylene and propylene. The emergence of ethane and methane, therefore, cannot be a ground to deny the benefit of exemption to the respondent.*
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> *31. In our considered view, no interference is called for in the well reasoned judgment/order of the Tribunal. The*

> *appeal being devoid of any merit is accordingly dismissed. However, in view of the facts & circumstances of the case, the parties are directed to bear their own costs."*

> *The ratio of the aforesaid judgment is equally applicable to the respondent's case in as much as it had not used any incremental input and input services for manufacture exempted quantity of LPG and that the entire quantum of inputs and inputs services was required for manufacture of dutiable finished goods.*

and the Hon'ble High Court of Gujarat had considered the very same decisions for the approval accorded to that of the Tribunal.

5. In these circumstances, the principle stands established that rule 6 of CENVAT Credit Rules, 2004 is inoperable *ab initio* in such clearances. Accordingly, the appeal is allowed and the impugned order is set aside. Cross-objection is also disposed off.

(Operative Part of the Order Pronounced in Open Court on 26th September 2022)

(AJAY SHARMA) **(C J MATHEW)**
Member (Judicial) ***Member (Technical)***

**/as*