CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Excise Appeal No. 2215 of 2012

(Arising out of Order-in-Original No.08/2012-CE-HYD-III-ADJN (COMMR) dt.07.05.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Linkwell Telesystems Pvt Ltd. **......Appellant**
B-45, Electronics Complex, Kushaiguda,
Hyderabad – 500 062

VERSUS

Commissioner of Central Tax,
Secunderabad - GST
Kendriya Shulk Bhavan, LB Stadium Road, **......Respondent**
Basheerbagh, Hyderabad – 500 004

Appearance
Shri G. Natarajan, Advocate for the Appellant.
Shri Mir Anwar Mohiuddin, Authorized Representative for the Respondent.

Coram:
HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30040/2022

Date of Hearing: 28.02.2022
Date of Decision: 11.03.2022

[Order per: P. VENKATA SUBBA RAO.]

The Appellant manufactures both dutiable and exempted goods, i.e., those on which Central Excise duty is payable and those on which it is not payable. It avails the benefit of CENVAT credit under CENVAT Credit Rules, 2004[1]. Its records for the period 2008-09 to 2010-11 were audited and it was found that the Appellant was maintaining separate records for the inputs which were used for manufacture of dutiable and exempted goods and took CENVAT

[1] Rules

Credit only on the inputs which were used in the manufacture of dutiable goods. However, the Appellant had also availed CENVAT credit of Rs. 11,95,077/- on the input services on the basis of the Input Service Distributor[2] invoices issued by its head office in respect of the services received there. This credit was not bifurcated into those which had gone into the dutiable or exempted goods. It was felt by the Revenue that an amount equal to 10% of the value of the exempted goods is payable under Rule 6(3) (i) by the Appellant and a Show Cause Notice[3] demanding an amount of Rs 11,95,39,489/- under Rule 6(3) (i) read with Rule 14 along with interest. The SCN further proposed to impose a penalty under Rule 15.

2. After following due process, learned Commissioner passed the impugned order the operative part of which is as follows:

> (i) I demand an amount of Rs.11,95,39,489/- (Eleven Crores Ninety five lakhs thirty nine thousand four hundred and eighty nine only) from M/s Linkwell Telesystems (P) Ltd., Kushaiguda Electronic Complex Hyderabad 500062, being the amount payable on the value of the exempted products cleared during the period from April 2008 to July 2010 under proviso to Section 11A of Central Excise Act, 1944 read with Rule 6(3)(i) of Cenvat Credit Rules 2004.
>
> (ii) I appropriate the amount of Rs.42,460/- (Rupees forty two thousand four hundred and sixty only) already paid by the assesses from the amount demanded at Sl.No.(i) above;
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> (iii) I also order recovery of interest at the applicable rate on the amount demanded at Sl.No.(i) above under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.
>
> (iv) I appropriate the amount of Rs.14,140/- paid by the assesses on 25.05.2010 towards interest from the amount of interest recoverable from the assesses at Sl.No.(iii);
>
> (v) I impose a penalty of Rs.11,95,39,489/- (Eleven Crores Ninety five lakhs thirty nine thousand four hundred and eighty nine only) on the assesses under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Sec.11AC of the Central Excise Act, 1944.
>
> The assessee have the option of paying the reduced penalty of 25% of the penalty imposed at Sl.No.(v) above in terms of Section 11AC of the Central Excise Act, 1944 subject to following the procedure prescribed therein."

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[2] **ISD**

[3] **SCN**

3. The following submissions have been made on behalf of the Appellant.

(i) The appellant had maintained separate records of the inputs used in manufacture of dutiable and exempted products.

(ii) As far as the credit of Rs. 11,95,077/- taken by the Appellant is concerned, it was taken on the basis of the ISD invoices issued by its headquarters which is permissible. Such services, having been used in the headquarters of the Appellant, cannot be attributed to only dutiable or to only exempted products.

(iii) The obligations on the manufacturer under Rule 6(1) which requires the manufacturer to not take credit on input services used in manufacture of exempted goods, Rule 6(2) which requires the manufacturer to maintain separate records, and Rule 6(3) which requires the manufacturer to pay certain sums DO NOT apply to input services indicated in Rule 6(5). A large proportion of the credit taken by the Appellant in this case was covered by Rule 6(5).

(iv) Of the credit remaining after deducting the credit taken on services covered by Rule 6(5), some portion of the disputed credit was taken when the Appellant was only manufacturing dutiable goods. Hence, the obligations under Rule 6 do not apply.

(v) After deducting the credit taken on services covered by Rule 6(5) and the credit taken on services when the Appellant was only manufacturing dutiable goods, a credit of Rs.42,460/- is left which it had reversed along with interest. Therefore, nothing survives in this demand.

(vi) No demand can be raised under Rule 14 to demand an amount under Rule 6(3) (i). Only credit irregularly availed can be demanded under Rule 14.

(vii) No penalty can be imposed under Rule 15 of an amount equal to an amount determined under Rule 6(3) (i).

4. On behalf of the Revenue, the following submissions were made which were also the findings of the learned Commissioner.

(i) The Appellant had manufactured both dutiable and exempted products.

(ii) It was required to maintain separate accounts as required under Rule 6(2) or pay an amount under Rule 6(3) and the appellant opted to maintain separate accounts. It has simultaneously also availed CENVAT Credit on the common input services, which is not permissible.

(iii) Hence, the provisions of Rule 6(3) (i) are attracted.

(iv) Even if many of the common input services on which the Appellant had taken credit are covered by Rule 6(5), the fact still remains that the Appellant has not maintained separate accounts and hence has still to pay an amount as per Rule 6(3).

(v) If the Appellant's contention that the common input service other than those covered by Rule 6(5), amounting to Rs. 42,460/- has already been reversed by the appellant along with interest is considered, it does not amount to not taking any credit and such an interpretation would render Rule 6 redundant.

(vi) Therefore, the appeal may be rejected.

5. We have considered the arguments on both sides and perused the records. Section 3 of the Central Excise Act, 1944 levies duties of excise on 'excisable goods manufactured or produced in India'. Section 4 provides for determination of the value for the purpose of calculation of duty. Central Excise Duty is a value added tax, i.e., it is designed so as to collect tax only on the value added during the process of manufacture. This is given effect to by charging duty on the transaction value (sale price) of the final products but allowing the manufacturer to take credit of the duty paid on the inputs or service tax paid on input services and use it to pay the duty on the final products. Thus, effectively, the manufacturer ends up paying duty in cash only to the extent of value added by it. Rules have been framed from time to time to give the credit of duty or service tax paid on inputs and input services. Initially, there were rules allowing MODVAT credit under Central Excise Rules, 1944 which were superseded by CENVAT Credit Rules, 2001 and further by CENVAT Credit Rules, 2002 and further by CENVAT Credit Rules, 2004.

6. The Cenvat Credit Rules 2004 were framed by the Central Government under Section 37 of the Central Excise Act and Section 94 superseding the earlier Cenvat Credit Rules, 2002 (which dealt with Cenvat credit only for manufacture) and Service Tax Credit Rules, 2002 (which dealt with only credit for service providers). The Cenvat Credit Rules, 2004 integrated the two sets of rules and had provided for credit of excise duty paid on inputs and service tax paid on input services used in or in relation to manufacture of dutiable final products or provision of taxable services. It has been the

principle of these rules as well as the erstwhile CENVAT and Modvat Rules, that credit shall be allowed only on inputs or input services which go into manufacture of dutiable goods. No credit shall be allowed in respect of inputs which go into manufacture of exempted goods.

7. However, an assessee can manufacture both dutiable and exempted goods or render both taxable and exempted services. Similarly, there can always be inputs or input services which are used in or in relation to manufacture of both dutiable and exempted goods such as the input services in dispute in this case. **Rule 6 of the Cenvat Credit Rules, 2004 which spells out *"Obligations of manufacturer of dutiable and exempted goods and provider of taxable and exempted services"* deals with this issue**. Rule 6 (1) states that credit shall not be allowed on inputs or input services which are used in the manufacture of exempted goods or provision of exempted services. Rule 6(2) requires separate accounts to be maintained and it reads as follows:-

> "(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable".

8. Rule 6(3) states that the manufacturer or provider of output service opting not to maintain separate accounts shall follow any of the following conditions applicable to him. Initially, it had three

clauses: (a), (b) & (c) of which the one in dispute is (b) which reads as follows :-

> "(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory;

9. This Rule 6 (3) was amended w.e.f. 01.03.2008 and a new Rule 6 (3A) was also introduced and these amended provisions are relevant for this case. After amendment, Rule 6 (3) & Rule 6 (3A) reads as follows :-

> "(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely :-
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> (i) **the manufacturer of goods shall pay an amount equal to ten per cent of value of the exempted goods and the provider of output service shall pay an amount equal to eight per cent of value of the exempted services** ; or
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> (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).
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> **Explanation I** – If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
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> **Explanation II** – For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.
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> (3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-
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> (a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised ;

(iii) description of dutiable goods or taxable services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) The manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month, -

(i) The amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) The amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) The manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-

(i) The amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) The amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of

taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = (M/N) multiplied by P, where L denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year ;

(d) The manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid ;

(e) The manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) Where the amount determined as per condition (e) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) The manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-

(1) details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally as per condition (b) ;

(2) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(3) Amount short paid determined as per condition (d), along with the date of payment of the amount short-paid,

(4) Interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(5) Credit taken on account of excess payment, if any, determined as per condition (f) ;

(h) Where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) Where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent per annum from the due date till the date of payment.

Explanation I – "Value" for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under Section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under Section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

Explanation II – The amount mentioned in sub-rules (3) and (3A), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III – If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3) or as the case may be sub-rule (3A), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.]"

10. Rule 6(3A) was further modified w.e.f. 2010 changing the formula for calculation. Rule 6(5) made an exception to Rules 6(1), 6(2) and 6(3). It reads as follows:

"(5) Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services."

11. Rule 14 provides for recovery of irregularly availed CENVAT credit. Rule 15 provides for a penalty in case of irregular availment of CENVAT credit. These read as follows:

> **"Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded.-**
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> Where the **CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service** and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.
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> **Rule 15. Confiscation and penalty.-**
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> (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and **such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater**.
>
> (2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.
>
> (3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.
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> (4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice."

12. The first question to be answered in this case is if some credit has been taken and thereafter reversed as has been done by the Appellant in this case with respect to part of the credit, does it amount to not taking a credit at all or is the Appellant still liable for wrong availment of credit? Hon'ble Supreme Court in the case of **Chandrapur Magnet Wires (P) Ltd. versus Collector of Central**

Excise, Nagpur[4] held that once credit is debited, it is as good as not taking credit at all. This decision is binding on all quasi-judicial authorities in the country. Para 7 of the judgment reads as follows:-

> "7. In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods".

13. Therefore, we cannot agree with the learned Commissioner's finding that even if bulk of the disputed CENVAT credit is allowable as per Rule 6(5) and even though the remaining CENVAT credit amounting to Rs. 42,760/- has already been reversed by the appellant along with interest, it cannot be considered as not taking ineligible CENVAT credit. The learned Commissioner felt that such an interpretation would render Rule 6 redundant and therefore, demanded an amount of Rs. 11,95,39,489/-. Applying the ratio of **Chanderpur Magnets,** it must be held that it is as good as the appellant not taking any CENVAT credit at all as soon as it has reversed the credit of Rs. 42,760/-. **Thus, the Appellant has completely complied with the requirement under Rule 6(1). Thus, there is no need to go into Rules 6(2) and 6(3). However, since these Rules have been discussed in the impugned order, we examine their scope in this case.**

14. Learned Commissioner has also held that the Appellant can choose Rule 6(2) or 6(3) and he cannot choose both and since the

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[4] **1996 (81) E.L.T. 3 (S.C.)**

Appellant has chosen Rule 6(2), the Appellant cannot take any credit on common input services. With respect, we cannot agree with the Commissioner. Nothing in Rule 6 prevents an assessee from choosing to maintain separate accounts under Rule 6(2) and still avail proportionate amount of CENVAT credit on common inputs or input services. The Commissioner has erred gravely in holding that any assessee who maintains separate accounts under Rule 6(2) is not entitled to any credit on common inputs or input services as there is no legal provision to back this assumption of the Commissioner. Such an interpretation will lead to absurd and impractical conclusions. For instance:

a) There are always some services such as telephone services, audit expenses, which can never be attributed wholly to either exempted or dutiable goods.

b) There are also many situations where one input may go into manufacture of more than one product and at the time of purchase one cannot be sure what quantity of the input will go into which product. Bulk drugs and chemical companies, for instance, use solvents such as Acetone and Benzene and store them in bulk in tanks and use them as required. Some of their final products may be dutiable and some may be exempted. Just as it is impossible to say what portion of salt in a kitchen will go into making dal and what portion into curry, the ultimate use of these solvents cannot be predicted.

c) There are also some inputs such as Furnace oil used in generating steam in processing industries, the use of which

cannot be predicted before hand with certainty as to what portion of the steam will go into manufacture of what products and how much furnace oil will get consumed for the purpose.

d) Even if the assessee initially manufactures only dutiable goods, if the Government issues a notification, some of them may later get exempted. It does not mean that the assessee will then lose its entire credit on common inputs or input services.

Thus it is wrong to say that an assessee opting to maintain separate accounts under Rule 6(2) cannot avail the benefit of CENVAT credit on common inputs or input services.

15. The next and related question is whether Rule 6(2) requires separate procurement of common inputs or input services as those to be used for manufacture of dutiable goods and those to be used for manufacture of exempted goods. We do not find so. It only requires the Appellant to maintain separate accounts for receipt, consumption and inventory of inputs and input services used in manufacture of dutiable final products and manufacture of exempted goods. Accounts can be maintained in many ways. One may procure goods separately for dutiable and exempted goods. One may procure some goods commonly and apportion them and take credit to the extent they are to be used for manufacture of dutiable goods. One may take the entire credit on the inputs and reverse the input credit if and to the extent they get used in the manufacture of exempted goods. All these amount to maintaining separate accounts. Just as any bank, while maintaining separate accounts for each account holder, does

not stock the money deposited by them separately, an assessee can stock the inputs together and take credit to the extent of their use in dutiable goods. Alternatively, the assessee can take the entire CENVAT credit and debit credit to the extent of the inputs used in manufacture of exempted goods, which as per the ratio of **Chanderpur Magnets,** is as good as not taking credit to that extent. If the assessee receives common input services and reverses the credit in proportion to the value of the exempted products, it is sufficient compliance of Rule 6(2). **In this case, the Appellant reversed not just credit proportionate to the value of the exempted goods cleared, but has reversed the entire credit on common input services used during the period when it was manufacturing both dutiable and exempted goods.**

16. The next question is whether Rules 6(1), 6(2) and 6(3) apply to all input services. A plain reading of Rule 6(5) shows that it's non-obstante clause overrides the provisions of Rules 6(1), 6(2) and 6(3). Therefore, insofar as the services covered by Rule 6(5) are concerned, credit will be available regardless of whether dutiable or exempted products are manufactured.

17. The last question is whether the department can demand and recover under Rule 14 an amount under Rule 6(3) (i) equal to 10% of the value of the exempted products. It is true that Rule 6 is titled ***'Obligations of manufacturer of dutiable and exempted goods and provider of taxable and exempted services'.*** It is also true that Rule 6(3) reads *"Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts,* ***shall***

follow *either of the following options, as applicable to him".* The use of the words '**obligations**' and '**shall**' may mislead one to conclude that they can be enforced. However, one may find that there is no Rule which enables the Revenue to enforce any of the options under Rule 6 on the assessee. The reason for this is that these are not obligations as in charging section of the taxing statute but are in the nature of conditions for availing the CENVAT credit. If one does not fulfill the obligations, one will not be entitled to CENVAT credit. Nothing more. Any wrongly availed CENVAT credit can be recovered under Rule 14. We also find that various alternatives given under Rule 6 are options available to the assessee who wishes to avail Cenvat credit on inputs which are used in manufacture of dutiable and exempted products. The rule nowhere empowers the Departmental officers to choose one of the options for the assessee and enforce it. If the assessee does not fulfill its obligations under any of the options under Rule 6 and still avails the cenvat credit on common inputs/input services it would be taking credit in violation of Cenvat Credit Rules, 2004 and such wrongly availed Cenvat credit can be recovered under Rule 14. But under no circumstances can the Department force a particular choice upon the appellant and demand an amount calculated as per Rule 6 (3) under Rule 14 as has been done in this show cause notice. Hon'ble High Court of Andhra Pradesh and Telangana in the case of **M/s Tiara Advertising versus Union of India**[5] held as follows:

> "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,

[5] **2019 (10) TMI 27**

> 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/-.
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> 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."

18. Similarly, Rule 15 provides for imposition of a penalty equal to the wrongly availed cenvat credit but not a penalty equal to an amount calculated as per Rule 6(3) (i) because Rule 6(3)(i) is only one of the options through which the assessee can fulfill its obligations to be entitled to CENVAT credit. Therefore, both the demand of an amount calculated as per Rule 6(3) under Rule 14 and imposition of an equivalent amount of penalty under Rule 15 are without the authority of law and need to be set aside.

19. Even otherwise, if the appellant has reversed the entire amount of CENVAT credit taken except the amounts covered by Rule 6(5) and the amounts of credit taken when the appellant was exclusively manufacturing dutiable goods, there can be no allegedly wrongly availed CENVAT credit and therefore, there is no cause of action for the Revenue at all.

20. To sum up,

a) Revenue cannot choose and force an option under Rule 6(3) upon the appellant.

b) An amount under Rule 6(3) cannot be demanded or recovered under Rule 14.

c) No penalty equal to an amount under Rule 6(3) can be imposed under Rule 15.

d) Thus, the entire demand in the SCN and confirmed in the impugned order is without any authority of law.

e) Once the amount of credit taken except the credit on services covered by Rule 6(5) and the credit on services received when the appellant was exclusively manufacturing dutiable goods has already been reversed by the appellant, Revenue has no cause of action either.

21. In view of our findings the appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Pronounced in the open court on 11.03.2022)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Veda