CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 26095 of 2013

(Arising out of Order-in-Original No. 06/2013 dated 31.01.2013 passed by the Commissioner of Central Excise Bangalore II Commissionerate, Bangalore.)

M/s. Kancor Colours Ltd. ,
Survey No. 426,
Motebennur,
Haveri District.

Appellant(s)

VERSUS

The Commissioner of Central Excise Bangalore – II Commissionerate,
C.R. Building, Queens Road,
Bangalore.

Respondent(s)

APPEARANCE:

Mr. G. Natarajan, Advocate for the Appellant

Mr. P. Saravana Perumal, Additional Commissioner for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20476 /2025

DATE OF HEARING: 09.10.2024
DATE OF DECISION: 04.04.2025

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.06/2013 dated 31.01.2013 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of Oleoresin Paprika, Oleoresin Capsicum and Oleoresin Marigold falling under Chapter sub-

heading 33019029, 33019022 and 13019045 of the Central Excise Tariff Act, 1985. The appellant was issued with a show-cause notice dated 10.05.2012 alleging that during the course of manufacture of finished goods which are cleared on payment of duty to domestic market as well as for export, failed to comply with provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 inasmuch as the product chilli seeds and chilli de-oiled cake which emerged during the process of manufacture of the said Oleoresin were cleared by the appellant without payment of duty. It was also alleged that the appellant had availed inadmissible credit of Rs.3,15,028/- on Oleoresin paprika received from M/s. Kancor Ingredients Ltd., Ernakulam in finished condition which are later exported by them. Since the inputs were cleared as such, cenvat credit availed on the same was irregular, consequently a total amount of Rs.1,55,58,568/- proposed to be recovered for the period June 2007 to September 2011 for clearance of chilly seeds and chilli de-oiled cake without payment of duty being 10% of the value of the said goods manufactured and cleared; also, cenvat credit of Rs.3,15,028/- proposed to be recovered with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant is a manufacturer of Oleoresin Paprika, Oleoresin Capsicum and Oleoresin Marigold which are either cleared on payment of excise duty or exported. From the raw chilli procured by the appellant, the seeds are first separated and sold as chilli seeds which is not leviable to excise duty. Further, during the process of manufacture of Oleoresin, residual raw materials such as chilli marigold etc. emerged in the form of de-oiled cake which also cleared by the appellant without payment of excise duty. It is their contention that they availed cenvat credit on various raw materials used in the extraction process such as Hexane, Acetone, Methonol and packing

material etc. and also various input services. The learned advocate has further submitted that the Department had wrongly applied Rule 6 of CCR 2004 to chilli seeds as raw chilli procured by the appellant are cut and the seeds are removed from the same. Till the stage of separation of seeds from the chilli, no cenvat credit was availed on any of inputs; the cenvatable inputs were used by the appellant only during the extraction process. Therefore, various inputs on which cenvat credit was availed by the appellant are solely used in the manufacture of Oleoresin which is dutiable and no part of such inputs are used in the manufacture / production of chilli seeds. Therefore, the appellant is entitled to avail credit on such inputs which are used in the manufacture / extraction process and the demand of 10% or 5% of the value of chilli seeds is not sustainable. With regard to cenvat credit availed on common inputs, the appellant had quantified the proportionate credit attributable to chilli seeds as Rs.98,640/- and paid the same along with interest of Rs.38,977/- which is also appropriated in the impugned order. He has submitted that w.e.f. 01.04.2008, the option to reverse the proportionate credit attributable to exempt goods has been introduced in the CCR and the said option should not be denied for not filing intimation to the Department. In support, he has placed reliance on the following judgments:-

i. Alstom T&D India Ltd. Vs. CCE [2019(370) ELT 625 (Tri. Chennai)]
ii. Cranes & Structural Engineers Vs. CCE [2017(347) ELT 112 (Tri. Bang.)]
iii. Mercedes Benz India (P) Ltd. Vs. CCE [2015(40) STR 381 (Tri. Mum.)]

3.2. Further, the learned advocate has submitted that by virtue of Section 69 to 73 of the Finance Act, 2010 retrospective amendment has been made to the Central Excise Rules and Cenvat Credit Rules 2002/2004 which allowed the assessee to reverse proportionate credit on inputs attributable to exempted products. The contention of the Department that since the

appellant had not exercised the option to reverse the credit within 6 months from the assent of the said Finance Bill by the President, they are not entitled to avail the facility of reversal of proportionate credit, is untenable; also the reliance placed by the Department on RR Paints Vs. CCE [2013(288) ELT 289 (Tri. Mum.)] is not applicable to the present case inasmuch as the present show-cause notice was issued on 10.05.2012; therefore no proceeding was pending as on the date of the Presidential assent to the Finance Act, 2010. It is their contention that therefore the said judgment is not applicable to the present case. Further, he has submitted that the Department itself has taken a view in the Conference of Chief Commissioners on the basis of Tariff Conference held on 28 & 29.10.2015 that there are two alternative mechanisms prescribed under Rule 6 of the CCR, 2004; one payment of an amount equivalent to the 6% of the value of the exempted goods/services and the second one is to reverse proportionate cenvat credit attributable to exempted goods/services. Therefore, the demand on this count cannot be sustained. Also, he has submitted that the said Rule 6(3) has been amended by Notification No.13/2016-CE(NT) dated 01.03.2016 providing statutory recognition to allow the assessee who failed to exercise the option under sub-rule (3) by the adjudicating officer to follow the procedure and reverse the proportionate credit with interest. It is his contention that the intention of the legislature has been to allow reversal of proportionate credit attributable to exempted goods. Therefore, the demand on this count is unsustainable.

3.3. On the issue of reversal of credit of de-oiled cake which emerged during the course of extraction process, the learned advocate has submitted that it is in the nature of by-product (waste) and hence provisions of Rule 6 of the CCR is not applicable to such waste. In this connection, he relied upon the decision of the Hon’ble Bombay High Court in the case of Rallis India Ltd. Vs UOI [2009(233) ELT 301 (Bom.)] which has been

upheld by the Hon'ble Supreme Court in the case of UOI Vs. Hindustan Zinc Ltd. [2014(303) ELT 321 (SC)]. Also reliance placed on the following cases:-

i. Principal Commissioner Vs. Barmalt India Pvt. Ltd. [2018(11) GSTL 302 (P&H)]
ii. Balrampur Chinni Mills Ltd. Vs. UOI [2019(368) ELT 276 (All.)]
iii. CCE Vs. Jayaswal Neco Industries Ltd. [2018(14) GSTL 20 (CHattisgarh)]
iv. M.K. Agrotech (P) Ltd. [2007(211) ELT 550 (Tri. Bang.)]

3.4. Further assailing the impugned order directing reversal of cenvat credit of Rs.3,15,028/- which they have received and later exported from their factory under Rule 16 of the CCR, 2002, it is submitted that the same cannot be denied in view of the settled position of law by this Tribunal in a series of cases. In support, they have referred to the judgment of this Tribunal in the case of S. Kumars Nationwide Ltd. Vs. CCE, Indore [2014(312) ELT 725 (Tri. Del.)], NCL Industries Ltd. Vs. CCE&ST, Guntur [2016(337) ELT 438 (Tri. Hyd.)].

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The issues involved in the present appeal are whether: (i) the appellants are required to pay 10%/5% of the value of the chilli seeds and chilli de-oiled cake / marigold during the relevant period June 2007 to September 2011 and (ii) reverse the credit availed on goods which were exported.

7. Undisputed facts are that the chilli seeds are emerged from the raw material i.e. raw chilli before being subjected to any process and the appellants do not use any input till the chilli seeds separated from the raw chilli, a claim not rebutted by the

Department; thus they have not availed cenvat credit on any of the inputs in the manufacture of chilli seeds. Also, it is not in dispute that they have reversed Rs.98,640/- along with interest of Rs.38,977/- proportionate cenvat credit attributable to input services used in the generation of chilli seeds cleared without payment of duty. Also, it is not in dispute that the de-oiled cake is a by-product / waste and cleared without payment of duty. The learned Commissioner did not accept the reversal of credit solely on the ground that it was made on 11.05.2012 i.e. after period stipulated in the Finance Act, 2010. We do not find merit in the said observation of the learned Commissioner inasmuch as the show-cause notice was issued to the appellant on 10.05.2012 and they have immediately reversed proportionate credit on 11.05.2012 attributable to the input services used in the manufacture of exempted product viz. chilli seeds. Further, it has been held in a number of cases that reversal of cenvat credit attributable to exempted goods would suffice compliance of Rule 6(3) of the CCR. This view has been expressed by the Tribunal in the case of Alstom T&D India Ltd. Vs. CCE [2019(370) ELT 625 (Tri. Chennai)]; Cranes & Structural Engineers Vs. CCE [2017(347) ELT 112 (Tri. Bang.)] and Mercedes Benz India (P) Ltd. Vs. CCE [2015(40) STR 381 (Tri. Mum.)].

8. Regarding reversal of cenvat credit on the de-oiled cake which emerged during the course of manufacture of Oleoresin, we find that it is waste product; hence cenvat credit attributable to such waste are not required to be reversed in view of the principle of law laid down by the Tribunal and High Court in the cases of Rallis India Ltd. Vs UOI [2009(233) ELT 301 (Bom.)]; Principal Commissioner Vs. Barmalt India Pvt. Ltd. [2018(11) GSTL 302 (P&H)]; Balrampur Chinni Mills Ltd. Vs. UOI [2019(368) ELT 276 (All.)]; CCE Vs. Jayaswal Neco Industries Ltd. [2018(14) GSTL 20 (CHattisgarh)] and M.K. Agrotech (P) Ltd. [2007(211) ELT 550 (Tri. Bang.)].

9. Further, we find that the issue of reversal of credit of Rs.3,15,028/- which has been received by the appellant in finished condition from M/s. Kancor Ingredients Ltd., Ernakulam and later exported under Rule 16 of the CCR, 2002 also cannot be denied in view of the judgment of this Tribunal in the case of CCE, Ahmedabad Vs. Tapsheel Enterprises [2007(216) ELT 284 (Tri. Ahmd.); S. Kumars Nationwide Ltd. Vs. CCE, Indore [2014(312) ELT 725 (Tri. Del.)] and NCL Industries Ltd. Vs. CCE&ST, Guntur [2016(337) ELT 438 (Tri. Hyd.)].

10. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 04.04.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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