
(2021) 10 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12204, 12205 Of 2019, Excise Cross Objection No. 10153, 10154 Of 2021

C.C.E. And S.T.-Rajkot

APPELLANT

Vs

Reliance Industries Limited

RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(d), 2(k), 2(I), 6, 6(1), 6(2), 6(3), 6(3A), 6(3)(ii), 6(6), 57D
Central Excise Rules, 2002 — Rule 6(2)
Central Excise Rules, 1944 — Rule 56A, 57CC, 57CC(1), 57D, 57E, 57F
Special Economic Zones Act, 2005 — Rule 25
Central Excise Tariff Act, 1985 — Chapter 27

Citation : (2021) 10 CESTAT CK 0028

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The respondents are engaged in the manufacture of excisable goods viz. Motor spirit, High-speed Diesel Oil, LPG etc of the Central Excise Tariff Act, 1985. The respondents are also availing Cenvat Credit of duty paid on input, capital goods and input services in terms of the provision of Cenvat Credit Rules, 2004. They have reversed /paid Cenvat Credit under Rule 6(3) of Cenvat Credit Rules, 2004 for the period from April 2015- March 2016, attributed to excisable goods viz. LPG removed without payment of duty under Domestic LPG Subsidy Scheme. Subsequently the respondents filed an application for refund to Large Taxpayer Unit (Mumbai) of Cenvat Credit reversed/paid for LPG under Rules 6(3) of Cenvat Credit Rules, 2004 on 28.07.2016 on the following counts:

i) Rules 6(1) of Cenvat Credit Rules, 2004 are not applicable to product LPG which is leviable to the Excise duty @8%, LPG is not exempted goods.

ii) Whenever LPG is removed to PSU oil companies under Domestic LPG Subsidy Scheme End Use exemption duty is claimed. There is no prohibition in Cenvat

Credit Rules, 2004 restricting availment of cenvat credit on input and input services when exemption is claimed under End Use notification at the time of removal of goods. The prohibition is only for the availment of credit both for input and input services for manufacture of exempted goods.

iii) When on input and input services credit are availed for excisable goods as in the case of LPG there is no restriction in Cenvat Credit Rules, 2004 for utilizing the credit thus availed.

iv) In view of the above, they are not required to reverse the input and input services credit under Rule 6(3), 2004 for removing LPG under End use exemption notification to PSU oil companies under Domestic LPG Subsidy Scheme.

v) For the above ground the respondents has taken support of following judgments:

? CCE Madurai Vs DCW Ltd -2009 (234) ELT 163 (Tri.- Chennai)

? Indian Oil Corporation Ltd Vs CCE Mumbai-II - 2009-TIOL-1702-CESTAT-MUM

? Hindustan Zinc Limited vs UOI- 2008(223) ELT 149 (RAJ)

In reference to the aforesaid refund claim of the respondent the Assistant Commissioner of Excise and Service Tax(GLT-3) MUM issued a Show cause notice dated 26.10.2016 wherein it was proposed to reject the refund claim of the respondents on the ground that LPG availing under chapter sub heading 2711900 of Central Excise Tariff Act, 1985 chargeable to nil rate of duty at Sr. No 81 of the Notification No. 12/2012 -CE dated 20.03.2012 when the LPG is supplied for household Domestic consumer and supplied under Domestic LPG Subsidy Scheme. Therefore, the respondents have correctly reversed the cenvat credit under Rule 6(3) of CCR, 2004. The Deputy Commissioner of Central GST DIV1 Jamnagar vide letter dated 20.02.2018 rejected the refund claim. Being aggrieved by the said Order in original the respondents filed the appeal before Principal Commissioner (Appeals) GST and Central Excise, Rajkot. The Learned Principal Commissioner (Appeals) in Orders in Appeal set aside the Order in Original and allowed the appeals. Therefore, the present appeals filed by the revenue.

2. Shri T.G Rathod, Learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the ground of the appeal. He also filed written submission and additional submissions vide letter dated 03.02.2021, 24.03.2021 and 06.08.2021. He submits that in term of Rule 6 of Cenvat Credit Rules, 2004 as it is existed at the relevant time, it is obligatory for a manufacturer that the goods which are cleared by him on payment of duty as well as without payment of duty by availing exemption under any notification and or where tariff rate is nil, not to take cenvat credit on such quantity of the inputs and input services which were used in manufacture of exempted goods or in case he takes the cenvat credit on all input and input services, he is required either to maintain separate account for receipt, consumption and inventory of the input and input service meant for

use in the manufacture of the dutiable final product and the quantity of input meant for use in the manufacture of exempted goods and take cenvat credit only on the quantity of input and input services which were intended for use in the manufacture of dutiable final product. If the manufacturer opts not to maintain separate account the manufacturer is required to pay amount equal to 6% of the value of the exempted goods cleared by him as provided under sub rule (3)(ii) of Rule 6 of Cenvat Credit Rules, 2004 following the procedure prescribed in subsequent provision of rule 6 (3A). He submits that there is no escape from this mandatory provision. He submits that the respondent has voluntarily opted for not to maintain separate account. Accordingly, they reversed the amount of cenvat credit in terms of rule 6(3) (ii) since may 2009. The refund claim were made by the respondent in respect of cenvat credit reversed/paid under Rule 6(3) of the CCR, 2004 for the period from April 2016 to March 2017 on removal of LPG under Domestic LPG Scheme on inputs as well as input services is not maintainable.

2.1 He submits that the appellate authority has wrongly held that to apply of Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004, there should be two different final products, one which is cleared on payment of Central Excise Duty and another cleared without payment of duty. This finding is totally incorrect and legally fallacious. For the operation of Rule 6, there is no requirement that the assessee should be manufacturing two different sets of products one dutiable and one exempted as observed by the Appellate authority. Rule 6 comes into picture once the goods are cleared under any exemption notification issued under section 5A of the Act. He submits that when the legislature has contemplated that there is no necessity/ requirement of reversal of credit, it has done so by making an express provision in Rule 6(6) of the said rules. Legislature in its wisdom provided for reversal of credit of input services used in exempted goods or exempted services either conditionally or unconditionally whether it is end use based or otherwise. It has also not made any differentiation in the exempted goods category. As per the facts of the present case, LPG is not only dutiable product which was manufactured using the common input i.e. crude petroleum, MS (petrol), HSD, Naphtha and other petroleum products are manufactured using the common inputs and the said products are dutiable. As both dutiable and exempted product were manufactured by the respondents, they have rightly reversed the proportionate credit attributed to the exempted goods i.e. LPG cleared under Domestic Subsidy Scheme, under rule 6(3A) of Cenvat Credit Rules, 2004. The Appellate authority without considering the above fact has wrongly allowed the refund with respect to the reversal of credit which is contrary to the provision of Rule 6(3) of Cenvat Credit Rules, 2004.

2.2 He submits that in the squarely applicable case relied upon by the adjudicating authority M/s Essar oil Limited reported at 2017 (345)ELT 645 (Tri.Ahd) wherein there is identical facts involved against the identical refund claim rejected by the lower authority .. The judicial discipline required that the appellate authority followed the judgment of jurisdictional tribunal. He submits

that there are catenas of judgments for maintenance of judicial discipline some of the judgments are relied upon as under.

? Lubi LLP vs Union of India

? Union of India & Other VS. Kamalkshi Financial Corporation-1991(55) ELT 433 (SC)

? Commissioner of Central excise Hyderabad Vs Novapan Industries- Civil Appeal No 5278-5282/2001

? Birla Corporation Vs Commissioner of Central Excise- Civil Appeal No. 5118/2003

? M/s Sulochana Cotton Spinning Mills Pvt Ltd Vs CCE -2006(196) ELT 159(Tri.Chennai)

2.3 Regarding reliance on Hon'ble Rajasthan High Court judgment in the case of Hindustan Zinc Limited in the OIA he submits that in the case of Essar Oil the said judgment has already been considered by the Hon'ble Tribunal. He submits that the facts of the Hindustan Zinc Limited case were entirely different from the facts of the present case. He submits that rule 57 ibid, had no provision which required reversal of modvat credit, taken in respect of the duty paid on the declared inputs which were to be, utilized in manufacturing of declared dutiable finished products and for by products generated during manufacture of final product. Whereas in the present case the LPG manufactured for supply to household domestic consumers under domestic LPG Subsidy Scheme is the final product and not a byproduct. There is no specific provision under Cenvat Credit Rules, 2004 which is similar to Rule 57 D of the erstwhile modvat credit scheme. The respondents are well aware of the quantum of cenvat credit on inputs and input services used in or in relation of LPG used for domestic purpose and accordingly reversed the same periodically as per the said rules. The appellate authority has grossly erred in allowing refund to the respondents by wrongly relying upon the judgment of Hindustan Zinc Limited as the facts and circumstances of the present case are completely different.

2.4 He submits that in the present case the product manufactured by the respondent i.e. LPG is a final product which has been cleared by the respondents, without payment of duty after availing the exemption Notification Nos 4/2006-CE. It was incumbent on the part of the respondents to follow the provisions of Rule 6 of the CENVAT Credit Rules, 2004. Accordingly respondent has rightly reversed the credit in terms of Rule 6.

2.5 He submits that as per the Commissioner (Appeals) there is a similarity between DCW Ltd at para 7.4 of OIA, he submits that it is in fact not similar and even not applicable to the present dispute. The case of DCW Ltd reported at 2009 (234) ELT 163 (Tri. Chennai)

2.6 He submits that it is a well settled legal position that the facts of decision

relied upon have to be shown to fit the factual situation in the given case .The judgments relied upon by the Appellate Authority does not fit with facts and circumstances of the present case. In this regard he placed reliance on the judgment of Hon'ble Apex court in the case of Alnoori Tobacco Products 2004 (170) ELT 135 (SC). He also placed reliance on the Supreme Court judgment in the case of Amrit Paper vs. CCE 2006 (200) ELT 365 (SC). He submits that the respective Hon'ble High court/Tribunal in the various cases has held that Cenvat credit availed on the input and input services used in manufacture of exempted goods are required to be paid/reversed by the manufacturer.

2.7 He submits that it is clear that in terms of Rule 2(d) of cenvat credit Rules, 2004 which stipulates that exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to nil rate of duty and thereby the respondent were required to reverse/pay an amount equal to the Cenvat credit in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 (as existed at the relevant time applicable o the subject matter) availed on the inputs and input services used in or in relation to manufacture of LPG (Domestic) which has been cleared by them by claiming/ availing benefit of exemption under Notification No. 04/2006- CE dated 01.03.2006 as amended vide Notification No 12/2012-CE dated 17.03.2012 at Nil rate of duty of Excise.

2.8 He submits that the respondent have opted not to maintain separate accounts hence therefore opted to pay an amount equal to Cenvat Credit availed on input and inputs service used in or in relation to manufacture of LPG (Domestic) cleared without payment of duty under Rule 6(3)(ii). In view of the provision of Rule 2(d) and rule 6(3) of the Cenvat Credit Rules, 2004, the respondents were required to reverse/pay an amount equal to the cenvat credit availed on the inputs and inputs services used in or in relation to manufacture of LPG (Domestic). Therefore, no merit in the refund claim filed by the respondents. He submits that in view of the above facts and statutory provisions the order in appeal passed by the Commissioner (Appeals) is not correct and proper hence liable to be set aside.

2.9 In his written submission dated 09.08.2021 as regard liberty the additional submission filed by the respondent, he submits that the respondents have taken ground that LPG is by product therefore Rule 6 is inapplicable cannot be accepted for the reason that this ground was taken first time at this appellate stage and the same was never taken before the adjudicating authority. He also referred to the earlier proceedings with reference to quantification of amount for reversal under rule 6 (3A) of CCR, 2004 whereby he submits that in the said case it is the respondent company who stated that they are engaged in the manufacture of dutiable goods viz. MS, HSD, ATF, LPG ,and exempted goods viz SKO for PDS and LPG etc therefore, it is admitted fact that LPG is a final product hence stand taken now that the LPG is a byproduct is not tenable . In support of this submission he placed reliance in the following judgments:

- ? Warner Hindustan Ltd vs. CCE, Hyderabad- 1999 (113) ELT 24 (SC)
- ? CC (Import), JNCH vs. British Electricals- 2017 (345) ELT 535 (Tri. Mum)
- ? Chennai Port Trust vs. CST, Chennai- 2017 (5) GSTL 394 (Tri.Chennai)
- ? Control Touch Electronics (Poona) P Ltd vs. CCE, Pune-III- 2016 (335) ELT 529 (Tri.- Mum)
- ? Thiru Arooran Sugars Ltd vs. CCE, Trichy - 2007 (219) ELT 950 (Tri. Chennai)
- ? Telco Ltd vs. CCE- 1990 (50) ELT 644 (Tri.)

2.10 Whereby his submission dated 24.03.2021, he filed written submission which is reiteration of the grounds as well as the submission made above .He further relied upon the following judgments:

- ? Amrit Paper - 2006 (200) ELT 365 (SC).
- ? Bazpur Cooperative Sugar factory Ltd - 2015 (316) ELT 72-(Uttarakhand)
- ? Paharpur Cooling Tower Ltd- 2012 (279) ELT 110(Tri. Del)
- ? Kesar Enterprises Ltd 2001 (130) ELT 93 (Tri Del. CEGAT)
- ? Kirloskar Oil Engines Ltd -1994 (73)ELT 835 (Tri)
- ? Ganesh Metal Processing Industries - 1996 (81) ELT 11 (AP)
- ? OKS Speciality Lubricants (I) Pvt Ltd- 1998 (103) ELT 175 (Tri.)
- ? Shiv Industries - 1996 (88) ELT 71 (Tri.)
- ? Chandrapur Magnet Wires(P) Ltd -1996 (81) ELT 3 (SC)
- ? Global Pharmatech Pvt Ltd - 2011 (274) ELT 413
- ? Topland Engines P Ltd- 2006 (199) ELT 209 (Guj.)
- ? Albert David Ltd - 2003 (151) ELT 443 (Tri. Del)
- ? Albert David Ltd- 2003 (157) ELT A81(SC)
- ? Bharat Heavy Electrical Ltd - 2003 (160) ELT 928 (Tri.Del)
- ? Prosafe International- 2020- TIOL-835- CESTAT- DEL

3. Shri Vishal Agarwal, Learned Advocate along with, Ms Dimple Gohil, Ms. Shilpa Balani, Shri Ramnath Prabhu, Advocates appeared on behalf of the respondents.

3.1 Shri Vishal Agarwal submits that Rule 6(1) provides that no Cenvat credit ought to be availed on inputs and inputs services used in the manufacture of exempted goods. Sub Rule (2) and (3) of Rule 6 are mere procedures/ mechanism prescribed for ensuring compliance with the substantive requirement of sub-rule(1).He submits that in the process of refining crude oil to obtain value added finished products viz. Motor Spirit, HSD, ATF, Naphtha. The LPG

necessarily arises and tapped from the crude distillation unit, coker unit, Fluid Catalytic Cracking Unit, Platformer Unit etc. It is relevant to note here that, it is not as if the respondent had set out to manufacture LPG. The same necessarily arises in the refining process and that the respondent could not have limited or curtailed the production of LPG nor could have manufactured other value added products using a lesser quantity of inputs and input services.

3.2 He submits that since the entire quantity of inputs and inputs services was required for manufacture of dutiable finished goods and that LPG emerges inevitably and unavoidably without any deliberate attempt to manufacture it, the mandate of rule 6(1) was not at all violated in any manner. He submits that the issue is no longer res- integra and has been decided by the Hon'ble Gujarat High Court in the Case of CCE vs. Sterling Gelatin - 2011(270) ELT 200 (Tri.Guj). He submits that the facts of the respondents' case are similar to that of Sterling Gelatin. Even in the case of respondent the LPG emerges without any deliberate attempt to manufacture it however by using lesser quantity of input and input services in the manufacture of dutiable products, the Respondent could not have averted the emergence of LPG. Therefore, the provisions of Rule 6(1) of the CCR are in no way infringed by the respondent.

3.3 He also relied upon the judgment of CCE vs. National Organic Chemical Industries Ltd - 2008 (232) ELT 193 (SC). He submits that the ratio of the aforesaid judgment is equally applicable in the respondents case in as much as it had not used any incremental inputs or input services for manufacturing exempted quantity of LPG and that the entire quantum of inputs and input services was required for manufacture of dutiable finished goods. By relying on the judgment of Swadeshi Polytex Ltd vs. CCE reported in 1989(44) ELT 794(SC) wherein it was held that whether the intended product that arises is a byproduct or otherwise is inconsequential. What is important is that the dutiable finished goods could not have been manufactured by using a lesser quantity of inputs. In this backdrop, it was held that the exemption claimed by the assessee therein could not be denied, even if an exempt product arose in the manufacturing process.

3.4 He submits that Rule 6(2) of Cenvat Credit Rules, 2004, maintenance of separate account for receipt, consumption and inventory of input and input service used in or in relation of manufacture of final product which are chargeable to duty as well as exempted product of goods as submitted in the preceding para. The respondent could not have manufactured dutiable goods using a lesser quantity of input and input services and consequently, the entire quantity of input and input services were used for manufacture of dutiable finished goods and accordingly, the requirement of separate account provided under Rule 6(2) stood satisfied and the entire credit was attributable to the manufacturer of dutiable finished goods only.

3.5 Without prejudice to the above submission it is further submitted that on the date of availing credit of Input and input services, there was no basis for

presuming that any part of the same will be used in the manufacture of any exempted goods. He relied upon the judgment of Hindustan Zinc Ltd - 2008 (223) ELT 149 (Raj), which has been affirmed by the Hon'ble Supreme Court in 2014 (303) ELT 321 (SC) to submit that under Modvat/Cenvat Scheme the decisive date for assessee entitlement to credit is on receipt of the Input into the factory of the manufacturer and not determine basis on the date of finished product. In the present case also the entitlement of credit on the date it received the input and input services and not on date when finished goods are cleared on payment of duty therefore the requirement of maintenance of separate account has to be complied with or otherwise at the threshold when the goods are received and not at the later date.

3.6 In the facts of the present case the exemption available to LPG is the conditional one subject to the same being supplied by PSUs for domestic household consumption under the PDS Scheme. There is no basis available to the respondent to determine on the date of availing Cenvat credit whether the said Input and Input services in relation to being used in the manufacture of dutiable finished goods would also be used in manufacture of exempted goods. In the context of such exemption which was conditional and contingent upon customer demonstrating compliance with a pre-condition it was held that the requirement of maintaining separate account under sub rule 2 of Rule 6 has been satisfied. Placing reliance on this tribunal judgment in the case of Goyal Proteins Ltd 2015 (325) ELT 165 (Tri. Del). He submits that in similar circumstances where the assessee manufactured dutiable finished goods and in the process certain by product inevitably emerged, has held that it was impossible for the assessee there in to maintain separate account for inventory of the Input and Input services meant for dutiable final products and exempted final products as this can be done only if two different final products, one dutiable and the other exempted are being manufactured consciously. The tribunal held that when compliance of a provision is impossible, and the assessee cannot be penalized for his failure to comply with the same. LEX NON COGIT AD IMPOSSIBILIA is a well settled legal principle. He also placed reliance on the following judgments:

? SRF vs. CC -2015 (318) ELT (607) (SC)

? Dai Ichi karkaria Ltd 1999 (112) ELT 353 (SC),

? CCE vs. Premier Tyres Ltd - 2001 (130) ELT 417 (Kerala)

? HMT vs. CCE 2008 (232) ELT 217 (Tri. LB) affirmed by the Punjab and Haryana High court.

3.7 Without prejudice, he further submits that the Cenvat credit was taken on receipt of the inputs and input services in its entirety as it was engaged in the manufacture of dutiable final product and there was no mechanism provided under Rule 6(2) of the Cenvat Credit Rules for maintaining separate account at threshold for inputs that have gone into the exempted goods that have emerged during the manufacturing process. Therefore, the respondent on receipt of inputs

and inputs services had taken full Cenvat credit on the same. In accordance with provisions of Rule 6 (3) of the CCR, the same becomes indefeasible in view of the above judgment.

3.8 Without prejudice , he further submits that Provision of Rule 6 (2) applies only where a manufacturer manufactures final product which is chargeable to duty and another which is exempt from payment of duty. In the instant case the LPG is dutiable , except when cleared to PSU oil marketing companies for distribution under PDS. This being the case, the requirement of Rule 6 (2) of there being a final product which is dutiable and another which is exempted is not satisfied. In this context he relied upon the judgment in the case of DCW Ltd-2009 (234) ELT 163 and affirmed by the Madras High Court. He submits that in judgment of DCW Ltd has been followed several decision of Hon'ble tribunal including S U Motors Pvt Ltd vs CCE reported in 2017- TIOL-3087-CESTAT-Mum and Tanfac Industries Ltd - 2010 (262) ELT 1123 (T).

3.9 He also placed reliance in the case of Sobha Developers Ltd vs. CCE-2012 (276) ELT 214 (T) which was affirmed by Hon'ble Karnataka High Court is applicable in the present case. The Hon'ble tribunal held that demand under Rule 6 of the CCR is not applicable when services are provided availing conditional exemption under Notification No. 4/2004-S.T dated 31.03.2004 read with Rule 25 of SEZ Act, 2005.

3.10 Without prejudice to the above submission, the respondent submits that the CBEC Manual of Supplementary Instruction at Para 3.7 of Chapter 5 in the context of waste scrap , byproducts and intermediate products generated in the process of manufacture, has held that no reversal of credit on input and input services is required in such situations. The respondent submits that neither the CCR nor the Supplementary Instructions Manual clarify as to what constitute a "By product". In this regard he placed reliance on the larger bench judgment of Hon'ble CESTAT in the case of Manufacturers Association of India vs. Designated Authority, DGAD, MOF reported in 2016 (342) ELT 465 (Tri. Del). In the said judgment Hon'ble tribunal applying principle of "equal economic importance" has held that chlorine gas emerging during the manufacturing of caustic soda is a byproduct and not a joint product. He submits that during the period 2015-16 and 16-17 total value of LPG cleared under exemption was approximately 0.64% and 0.38% of the Cumulative of the entire final product cleared from its refinery and therefore applying the principle of Equal Economic Importance laid down by larger bench in the above judgment, the LPG emerging during manufacture of Final Product is a byproduct and not a co Product/joint product, therefore there is no requirement of reversal of credit of input and input services even if they are used in the manufacture of exempted by product.

3.11 Without prejudice to the above, he further submits that insistence for reversal of credit in the hands of the respondent would also defeat not only the object behind the exemption notification No. 12/2012 which has been issued by the Central Government for subsidizing the cost of the LPG in the hands of the

domestic consumer by relieving such costs from the burden of duties of excise but also from rule 6(3A) of Cenvat Credit Rules, 2004 by insistence on reversal, the cost of LPG would increase. Therefore, entire objective of subsidizing the cost of LPG is in the hands of the domestic consumers would get defeated. He submits that interpretation which had the effect of defeating the object behind the exemption notification should be rejected in favour of an interpretation which sub serves the Government's policy of relieving the cost of LPG from the incidence of excise duties.

3.12 Without prejudice he submits the notification No. 12/2012-CE by its very nature aims to benefit not the respondent manufacture but the particular end users of the product. In view of this there was no justification for invoking the provisions of Rule 6(3A) of CCR, 2004. Raising objections to submission made by the Learned AR for the appellant (revenue) during the course of hearing he submits that as regard the submission of Learned AR that rule 6 more particularly the heading, had under gone an amendment vide Notification No 3/2011 whereas the one reproduced by the Commissioner (Appeal) was the amendment taken place vide Notification No 23/2004. The heading of rule 6 of CCR read as "obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services" which was substituted as "Obligation of a manufacturer of dutiable or producer of final products".

3.13 The respondent submits that the 2011 amendment of Rule 6 which the learned DR relied upon in fact furthers the respondent's case. He submits that the respondent submissions urged by placing reliance on the judgment of this tribunal in the case of DCW LTD (Supra) which followed in several decision of Hon'ble tribunal. The provision of rule 6 (3) applies only when the manufacturer manufactures two different kind of product one which is chargeable to duty and another product which is exempted. The 2011 amendment has substituted the words "Obligation of manufacturer of dutiable and exempted goods" with "Obligation of manufacture of Final Products" which clearly provides that post 2011 there remains no doubt that there has to be two different final product one excisable and another exempted and not applicable in the case of homogeneous excisable goods which is dutiable as also can be cleared under an exemption notification. He submits that as regard the learned AR's reliance among the judgments in the case of Kelvion India Pvt Ltd (Supra) it is settled law that decision is a authority only on the prepositions that it decides and not urged or considered or what can be said logically flowing there from. He takes support from the judgment of the Hon'ble Supreme Court in the case of Mittal Engineering Works (P) Ltd - 1996 (88) ELT 622 (SC). The judgment in the case of Kelvion was rendered on a different set of facts and more importantly the tribunal was called upon to examine the provisions of Rule 6 (6) of the CCR. The relevant provision viz Rule 6(2) was not at all brought to the notice of the tribunal. The judgment to that extent is per-incuriam. The reliance placed by the Learned AR on the judgment in the case of Kelvion is does not applicable to the facts of the present case.

3.14 He further submits that the learned AR has placed strong reliance on the judgment in the case of Essar Oil Ltd - 2017 (345) ELT 645 (Tri.Ahd). He submits that in its humble view the said judgment of Essar oil is inapplicable to the said facts of the case. As regard the reliance made on the judgment of this tribunal in the case of Chemito Technologies Pvt Ltd - 2017 -TIOL-1161 - CESTAT- MUM by learned AR, it is not an authority in as much as the same was rendered ex-parte, without the assistance to the court. Therefore, it is not a good law. On the contrary the correct position of law has been laid down in the case of SU Motors Pvt Ltd (Supra) wherein it was held that Rules 6 (3) should be applicable only where manufacturer of goods manufactures goods of two types one is excisable and another is exempted however, in case where goods manufactured are dutiable rule 6 (3) will not be applicable. He also submits that the judgment of Nicholas relied upon by the Learned AR is inapplicable to the facts and circumstances of the present case also. The judgment of Nicholas Priamal (India) Ltd - 2009 (244) ELT 321 (Bom) has been distinguished by the Hon'ble Gujarat High Court in the case of Sterling Gelatin.

3.15 As regard the reliance of the Learned AR on the judgment of Sulochana Cotton Spinning Mills vs. CCE -2006 (196) ELT 159 (T) it is inapplicable to the facts of the present case in as much as neither the provisions of Rule 6(2) CCR nor the argument that there have to be two different finished goods for Rule 6(2) to apply was either canvassed or considered. In the case of Kesar Enterprises Ltd 2001 (130) ELT 93 (T) the facts were totally different as the assessee was manufacturing two different product viz 'IMFL' which was non excisable and 'Rectified Spirits' which are excisable products but cleared at nil rate of duty. The judgment of Amrit Paper 2006 (200) ELT 365 (SC) followed thereafter in the case of Andhra Pradesh Paper Mills Ltd - 2015-TIOL -107- CX is inapplicable. The facts of the present case as a issue being not similar to the case on hand the judgment cannot be relied upon. Similarly in the case Bazpur Cooperative Sugar factory Ltd - 2015 (316) ELT 72- (Uttrakhand) the facts in that case is different from the fact of the present case and the assessee did not argue that Rule 6(2) to apply there has to be more than one final product of which one is exempted. The judgment in the case of Paharpur Cooling Tower Ltd-2012 (279) ELT 110(T) is not applicable to the facts of the present case.

3.16 He further submits that all other judgment relied upon by the Learned AR, the facts in those cases are not similar to the facts in the present facts therefore ratios of those judgments are not applicable. In view of the above argument he submitted that the orders passed by the Commissioner (Appeals) suffer from no illegality or error and consequently appeal filed by the department are liable to be dismissed.

4. We have carefully considered the submission made by both sides and perused the records. The issue under consideration before us is that whether in the facts and circumstances prevailing in the present case, the provision of Rule 6 (1) of Cenvat Credit Rules, 2004 which mandates that Cenvat Credit shall not be

allowed on such quantity of input and input services used in or in relation to manufacture of exempted goods can be stood infringed whether in given facts and circumstances of the present case, the respondent is required to maintain separate account in terms of Rule 6 (2) and consequently whether the respondent is required to pay an amount in terms of Rule 6 (3) read with rule 6 (3A) of CCR,2004, in respect of input or input services attributed to the exempted product namely Liquefied Petroleum Gas (LPG).

4.1 The respondent is having petroleum refinery wherein from the crude petroleum oil they manufacture various products viz. Motor sprit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc while undertaking the process of cracking crude oil at its Jamnagar Refinery. During the process of refining crude oil LPG namely propane and Butane also emerged at intermediate stage. The LPG is liable to excise duty as per the Central Excise Tariff at the rate of 8% however, the same LPG if it is clear to PSU oil Companies for further supply to domestic consumer under PDS, it is exempted.

4.2 The case of the department is that since the LPG is one of the excisable products and cleared under exemption the respondent is required to maintain separate account in terms of Rule 6 (2) which is reproduced below:

[(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-

(a) the receipt, consumption and inventory of inputs used-

(i) in or in relation to the manufacture of exempted goods;

(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;

(iii) for the provision of exempted services;

(iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services-

(i) in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services, and shall take CENVAT credit only on inputs under sub-clauses

(ii) and (iv) of clause (a) and input services under sub-clauses

(ii) and (iv) of clause (b).]

To examine their issue it is necessary to analyze the relevant legal provision of Cenvat Credit Rules. The Rule 2 (K) & (I) is reproduced below:-

[(k) "input" means-

(i) all goods used in the factory by the manufacturer of the final product; or

.....

.....

[(l) "input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

.....

From the reading of the above Rule 2 (k) & (l) of Cenvat Credit Rules, 2004, any input or input services used for manufacture of excisable goods are admissible input services. In the present case the input or input services for which the Cenvat Credit was availed by the respondents are indeed used in or in relation to excisable goods amongst other LPG therefore, no doubt that the input and input services on which the Cenvat Credit was availed are qualified as "input and input services" as defined in Rule 2(k) & (l).

Rule 6(1) read as under:-

6. (1) The CENVAT credit shall not be allowed on such quantity of input used in or relation to the manufacture of exempted goods or for provision of exempted services, on input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services], except in the circumstances mentioned in sub-rule (2):

4.3 As per the above Rule 6 (1) Cenvat Credit shall not be allowed on such quantity of input or input services used in or in relation to manufacture of exempted goods however, the exception is provided in the circumstances mention in sub rule 6(2). In the present case the respondents have used input and input services in the manufacture of dutiable goods i.e. motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. the LPG is generated as one of the product which also dutiable but under the said scheme of the Government i.e. PDS when it is decided to clear dutiable LPG under the PDS there is an exemption on excise duty. However, the main products which are dutiable are motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF),

Naphtha, Fuel oil etc are the products only for the manufacture of the same entire input and input services are used therefore it cannot be said that any input or input service is used right from the beginning of the process in the manufacture of exclusively exempted goods therefore, Rule 6 (1) is not applicable. Consequently rule 6 (2) is also not applicable.

4.4 In the facts of present case it is undisputed that right from the crude petroleum oil the respondents intended to manufacture dutiable goods i.e. motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc even LPG therefore, at the time of taking Cenvat Credit the input and input services are used in the manufacture of excisable dutiable products therefore, the availment of Cenvat Credit at the time of receipt of input and use thereof is absolutely in terms of provisions of CCR. The respondents' submission as far as that even if LPG is not generated in course of manufacture there cannot be any reduction in the quantum of use of input and input service for manufacture of motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc therefore, the quantum of input and input services was used in the manufacture of motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. will remain same irrespective of the facts whether the LPG is generated or otherwise. Therefore, it cannot be said that any part of input and input services are not used for manufacture of dutiable product i.e. motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc.

4.5 The LPG generated during the course of manufacture of motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. is dutiable right from the stage of receipt of input and input services till the completion of manufacture of LPG. Therefore, during that stage availment of Cenvat Credit is absolutely in conformation to Cenvat Credit Rules, 2004. In the process or refining crude oil to obtain value added finished goods namely motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. the LPG inevitably arises and tapped from the crude distillation unit, coker unit, fluid catalytic cracking unit (FCCU), platformer unit etc. in these process it is not as if respondent had set out to manufacture LPG. The same arises in the refining process and that the same could not have been limited or curtailed the production of LPG nor could have been manufactured other value added products using a less quantity of input of input services as whether the LPG then or otherwise. The quantum of input and input services will not get reduced even if LPG is not generated with main products. The same quantity of input and input services is required and indeed used for the manufacture of motor spirit (MS), High Speed Diesel Oil, aviation Turbine fuel (ATF), Naphtha, Fuel oil etc. Therefore, the input and input services of such dutiable product the Cenvat Credit on such input and input services cannot be curtailed or reduced by applying rule 6 (1), 6 (2) and 6 (3A) of Cenvat Credit Rules, 2004. In this undisputed facts when the entire quantity of input and input services was required for manufacture of dutiable finished goods and when LPG emerged

inevitably without any deliberate attempt to manufacture it, the provision of Rule 6 (1) was not violated in any manner.

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.

.....

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.

.....

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.

.....

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 spirit (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 spirit (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.

.....

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 categorical 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.

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.

4.8 In the case of Swadeshi Polytex Limited reported in 1989 (44) ELT 794 (SC) also the same view was expressed wherein it was held that whether the intended product that arises as the by-product or otherwise is inconsequential. What is important is that the dutiable finished goods could not have been manufactured using the lesser quantity of inputs. In this backdrop it was held that the exemption claimed by the assessee therein could not be denied even if the exempted product arose in the manufacturing process. The relevant observation of Apex Court is extracted below:

2. The appellant was at all relevant times engaged in the manufacture, inter alia, of polyesterfibre (man-made) falling under Tariff Item 18 of the erstwhile Central Excise Tariff. In the manufacture of the aforesaid, the appellant was using, amongst other inputs, ethylene glycol and DMT (Dimethyl Tetraphthalate) - duty paid ethylene glycol falling under Tariff Item No. 68 of the erstwhile Central Excise Tariff received by the appellant and used in the manufacture.

3. The Notification No.201/79 dated 4-6-1979, mentioned hereinafter, exempted, according to the appellant, all excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item 68 had been used, from so much of the duty of excise as was equivalent to the duty of excise paid on the inputs. The appellants claimed set-off of duty on ethylene glycol used in the manufacture of polyester fibre under Notification No. 201/79 dated 4-6-1979. In response to the appellant's seeking set-off of the duty paid on ethylene glycol, they received a letter from the Assistant Collector of Central Excise, Ghaziabad, dated 5th August, 1980 by which the Asstt. Collector held that no proforma credit was allowable in respect of ethylene glycol for the following :-

(a) Methanol which is not excisable and is cleared without payment of duty; (b) Glycol residual waste which was being destroyed by the appellants by throwing in the field; and (c) Polyester fibre waste which was used in the recovery of DMT and exempt from payment of duty under Central Excise Notification dated 19-5-1976. The appellants were further directed to furnish the exact percentage of ethylene glycol content used/consumed in the methanol, the ethylene glycol residual waste and polyester fibre waste; and that not to utilise the proforma credit or set-off credit till the data was furnished and the same was authenticated by the Chemical Engineer. The classification list submitted by the appellants was modified in terms of the said letter.

.....

5. Hence, it is the case of the appellants that from 11-4-1981 even though some part of the input may be contained in any waste, refuse or by-product which is

chargeable to nil rate of duty, the credit of the duty paid on the inputs could not be denied. By this order the set-off of duty in respect of duty paid ethylene glycol was allowed from 11-4-1981 onwards except in the case of ethylene glycol used/ consumed in polyester waste used for recovery of DMT on the ground that this polyester waste was chargeable to nil rate of duty. Similarly, duty paid on ethylene glycol which was used for recovery of DMT was held not to be allowable while paying duty on polyester fibre.

.....

20..... It is clear, therefore, that the Tribunal failed to interpret the words of the exemption notification No. 201/79 properly and fully. The said notification exempted all excisable goods on which the duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item 68 (i.e. inputs) had been used from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. It is clear, however, that ethylene glycol was used in the manufacture of polyester fibre. It appears that methanol arises as a part and parcel of the chemical reaction during the process of manufacture when ethylene glycol interacts with DMT to produce polyester fibre. It is not possible to use a lesser quantum of the ethylene glycol to prevent methanol from arising for producing a certain quantity of polyester fibre. Thus, the quantity of ethylene glycol required to produce a certain quantum of polyester fibre is determined by the chemical reaction. It may be mentioned herein that it is not as if the appellants have used excess ethylene glycol wantonly to produce the methanol. It is clear that the appellants are not engaged in the production of methanol but in the production of polyester fibre. That position is undisputed. Therefore, it appears that the Tribunal erred when it held that the appellants were not entitled to a part of the credit of duty since ethylene glycol when it interacts with DMT also gives rise to methanol. This construction would frustrate the object of exemption if something which evidently arises out of the interaction. Even prior to amendment to notification No. 201/79 with effect from 11-4-87, the only situation where the credit of the duty paid on the inputs could be denied was only where the final products were wholly exempt from the duty of excise or chargeable to nil rate of duty. In the present case, the excisable goods, namely, polyester fibre were not wholly exempt from duty nor chargeable to nil rate of duty. It cannot be read in the notification that the notification would not be available in case non-excisable goods arise during the course of manufacture. In fact, the Tribunal seems to have erred in not bearing in mind that exemption notification was pressed in service in respect of polyester fibre which is excisable goods and not in respect of methanol which arises as a by-product as a part and parcel of chemical reaction. It appears further on a comparison of the Rule 56A and the Notifn. No. 201/79 that these deal with the identical situation.

.....

22. In our opinion , the same analogy and reasoning would apply when the

methanol arises as a result of chemical reaction and not as a result of any by-product. In the instant case, the methanol was non-excisable. Just because methanol arises as a part and parcel of the chemical reaction during the process of manufacture, it cannot be said that methanol was not used in the manufacture of polyester fibre. The intention of the Government is evident furthermore, from the trade notice of Pune Collectorate No. 31/81. The Tribunal, therefore, should have taken into consideration the trade notice for interpretation of exemption Notifn. No. 201/79, which was para materia with Rule 56A."

From the above judgments it is settled that any particular process of manufacture of dutiable goods any exempted goods which are inevitable emerges it cannot be said that out of the total input and input services use in the manufacture is with lesser quantity attributed to the dutiable product. In other words the entire quantity of input and input services are used for dutiable goods, if so, which is undisputed there is no question of reducing Cenvat credit only because in the present case LPG is arising during the course of manufacture.

4.9 The revenue's contention is that the respondent since manufacturing dutiable and exempted goods i.e. LPG they were required to maintain separate account in terms of Rule 6(2) of CCR, 2004. The said rule mandates maintenance of separate account for receipt, consumption and inventory for Input and Input Services in relation to manufacture of final products as well as the exempted goods.

4.10 As discussed above since the respondent would not have manufactured the dutiable goods by using lesser quantity of Input and input services the entire cenvatable Input and Input service were used for manufacture of dutiable finished goods therefore, the requirement of Rule 6 (2) stood satisfied as the entire credit was attributed to the manufacturer of the finished dutiable goods only. We also find that the eligibility of the cenvat credit has to be decided on the date of receipt of Input /Input Services and availment of Cenvat Credit. In the present case on date of availing credit on input and input services, there was no basis for presuming that any part of the same will be used in the manufacture of any exempted goods for the reason that at that time LPG was dutiable good only after the receipt Input and Input services and availment of credit, even upto manufacture of LPG it is not known that LPG is exempted goods, it is only at the time of clearance of goods on end use basis under PDS it is cleared under exemption. This gets support from the judgment of Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd - 2008 (223) ELT 149 (Raj.) which has been affirmed by the Hon'ble Supreme Court in 2014 (303) ELT 321 (SC) where in it was observed that under the Modvat/Cenvat Scheme the decisive date for assessee's entitlement to credit is on receipt of the Input into the factory of manufacturer and not deteremined based on the date of clearance of finished products. The relevant observation of Hon'ble Rajasthan High Court is as follows:

"31. As on the date the inputs in question were received by the manufacturer and is commodity in the manufacture of which he was engaged to use, the

provision of Rule 57CC were the zinc and lead and sulphuric acid and other commodities. Presently we are not concerned with as on the date the inputs received the sulphuric acid the final product with which we are concerned was chargeable to duty at the rate of 15%. The manufacturer had not been exempted from payment of duty on his end product nor the duty prescribed in the sulphuric acid under the tariff was nil nor there was unconditional exemption to the manufacturer on payment of duty at Nil rate on any condition to be fulfilled by him. We have already noticed above that General Exemption No. 66 which prescribed nil rate of sulphuric acid used in manufacture of fertilizers. It did not provide nil rate of duty on production or manufacture of Sulphuric Acid as such. Therefore, the end product sulphuric acid was not subjected to exemption. If Rule 57CC is read closely, the exemption or nil rate must be related to the end product of the manufacturer. It does not speak of the nil rate or exemption from payment of duty on user of the commodity produced by the subsequent manufacturer using the same as his raw material or inputs. Obviously where the nil rate of duty is on the user of the commodity by the third person or used in manufacture of the another commodity, it is not the exemption or rate which exists as on the date any inputs are received by the manufacturer of sulphuric acid, nor it is amenable to such exemption or duty at nil rate when the manufacturer of sulphuric acid takes place. The manufacturer becomes eligible to avail Modvat credit on receipt of inputs in his factory for manufacture of goods which are not exempted from excise duty or which are exempted from excise duty or which are subject to nil rate of Duty. He cannot say that he is exempted from the payment of duty on his end product or that his end product is liable to nil rate of duty even at the time when sulphuric acid is manufactured. However, on clearance of end product at nil rate is due to the contingency arising as per specified condition coming into existence as per any exemption notification for the benefit of its end use by the buyer which was not in the hand of manufacturer. Like Rule 57E and 57F the provisions would have been differently worded to withdraw the Modvat credit already availed at the time when it became due as per condition of Rule.

32. Apparently the existence of condition of exemption of end product from duty or its liability to nil rate of duty must also exist on the date inputs became available for availing Modvat credit.

33. It can be seen from yet another angle. In case inputs are received in factory and used in manufacture of end product. But the end product is destroyed by fire before stage of its removal from factory premise. In such circumstances, no excise duty becomes payable on end product. Yet Modvat credit availed on inputs used in destroyed goods is not to be recalled. This is also suggestive of the fact the relevant date for considering exemption from duty of the end product in or in relation to which inputs are used is the date of its receipt in factory and condition is its actual use in or in relation to manufacture of end product by the manufacturer. The chargeability to duty or non-chargeability due to exemption or notified nil rate is to be considered at the stage before goods are actually

produced, but on receipt of inputs intended to be used in manufacture of such goods. That being so ultimate clearance of goods at nil rate due to contingency existing at the time of removal does not affect the entitlement that legally arises long before that date."

From the above judgment it is settled that cenvat credit validly availed at the time of receipt of input and input services. This view is further supported by the following judgments:

CCE vs Goyal Proteins Ltd - 2015 (325) ELT 165 (Tri. Del)

SRF Ltd vs. CC - 2015 (318) ELT 607 (SC)

Dai Ichi karkaria- 1999 (112) ELT 353 (SC)

CCE vs. Premier Tyres LTd - 2001 (130) ELT 417 (Ker)

HMT vs. CCE - 2008 (232) ELT 2017 (tri.LB)

In view of the above judgment when at the time of taking credit it was validly taken no mechanism was provided to recover the same.

4.11 The similar circumstance in the case of Service tax matter this tribunal has considered in Almebic - 2019 (28) GSTL 71 (Tri. Ahd) which was also upheld by the Hon'ble Gujarat High Court reported at 2019 (29) GSTL 625. In that case the facts was service provider constructed residential building and availed the cenvat credit in respect of various input services at the time of commencement of construction of building as per the Finance Act, 1994. The building of residential complex is liable to service tax however; the service tax is chargeable only if the flats in the building are sold before receipt of completion certificate. However, part of the flat sold before the receipt of the completion certificate are chargeable to service tax but in the same construction part of flats sold after receipt of completion certificate which are not chargeable to service tax. The case of the department was since part of the residential flats sold without payment of service tax the same shall be liable to payment of an amount in terms of rules 6 in respect of input services attributed to the residential flats on which service tax was not paid. This tribunal taken a view that when on the date of receipt of input service ,output service being wholly taxable whole credit is available to the assessee and the assessee is not required to reverse cenvat credit availed during the period when the output services were wholly taxable even though the part of output service subsequently became non chargeable to service tax for the reason that the residential flats were sold after obtaining the completion certificate. Applying the ratio of the above judgment in the present case also the facts remains that at the time of taking cenvat credit the product LPG is very much dutiable and the same became exempted subsequently only at the time of clearance of the goods. Therefore in this peculiar fact of the present case, once the cenvat credit was validly taken at the time of receipt, the same cannot be denied subsequently.

4.12 We further find that it is the contention of the department that the appellant is under obligation to maintain the separate account as provided under Rules 6(2) of CCR. In the present case taking into consideration the manufacturing process and use of input and input services therein the entire input and input services were used in the manufacture of dutiable goods, there is no intention to use the particular input and input services in a particular quantity is used for manufacture of LPG. Therefore, in this fact it is impossible to maintain separate account in respect of Input and input services received and used in the manufacture of LPG. It is settled law that when compliance of provisions is impossible the same cannot be insisted upon the assessee. Our view is supported by the judgments in the case of Goyal Proteins Ltd - 2015 (325) ELT 165 (Tri. Del) wherein the facts was that the assessee manufacture the dutiable finished goods and in the process certain byproduct inevitably emerged. it was held that it was impossible for the assessee to maintain separate account and inventory of the Input and input services meant for dutiable final products and exempted final products as this can be done only if two different final products, one dutiable and the other exempted are being manufactured consciously. The tribunal held that when compliance of provisions is impossible, an assessee cannot be penalized for his failure to comply with the same.

4.13 In the case of SRF Ltd -2015 (318) ELT 607 (SC) the Hon'ble supreme court held that the benefit of exemption cannot be denied if its conditions are impossible to be satisfied. In view of the above judgment in the present case also since there is no use of input and input services particularly for manufacturer of LPG whereas the Input ad Input services primarily used for manufacture of dutiable products it is impossible to maintain separate account in terms of Rule 6(2) of Cenvat Credit Rules, 2004.

4.14 The respondents without prejudice also submitted that the provision of Rule 6(2) applies only where the manufacturer manufactures final product which is chargeable to duty and another which is exempted from the payment of duty. In the instant case LPG is dutiable, except when cleared to PSU oil marketing companies for distribution under PDS. This being the case , the requirement of Rule 6(2) of there being a final product which is dutiable and another which is exempted is not satisfied.

4.15 We find that the respondents case gets support from the decision of this tribunal in the case of DCW Ltd affirmed by the Hon'ble madras high court wherein it was held that the provision of Rule 57CC(1) of the Central Excise Rule (i.e. pari-materia with Rule 6 of the CCR) do not apply in a situation where a certain quantity of dutiable finished goods is cleared under exemption , while the remainder is cleared on payment of duty, as the final product in this situation is only one and not another final product. The relevant extract of the judgment is reproduced below:

"2. After considering the submissions, we have found valid reason to sustain the impugned order. Though, in their cross-objections, the party has pleaded that

none of the inputs specified in the SCN and the Order-in-Original can be considered to be a common input for purposes of Rule 57CC, we think, it is not necessary to address this question inasmuch as this case can be disposed of with reference to final products. Caustic Soda Flakes and Trichloroethylene were the final products of the respondents and both were excisable during the period of dispute. A major part of the production of either of these products was cleared on payment of duty. A small part was cleared without payment of duty to M/s. SC and M/s. BARC under Notification No. 10/97-C.E. dt. 1-3-97. For the provisions of Rule 57CC(1) to apply, there should be one final product which is dutiable and another final product which is exempted from payment of duty or chargeable to 'Nil' rate of duty. Invariably, there must be two different final products. It is not open to the Revenue to say that a part of the quantity of Caustic Soda Flakes manufactured and removed from the factory during the period of dispute was one final product and the remaining quantity of the same final product was "another" final product. The requirements of Rule 57CC(1) were not met in this case, as rightly held by the lower appellate authority. The appeal fails and the same is dismissed."

From the aforesaid decision of DCW which was affirmed by Hon'ble Madras High Court has been followed in several decisions of this tribunal including that of SU Motors Pvt Ltd 2017- TIOL- 3087- CESTAT-MUM and CCE vs. Tanfac Industries and Greaves Ltd. The relevant order of Tanfac Industries and Greaves Ltd is as follows:

"In view of the above decision, particularly dealing with Notification no 10/97-CE it was conclusively held that Rule 6(3) shall be applicable only when manufacturer of the goods manufacture goods of two types, one is excisable and another is exempted. However, in case where goods manufactured are dutiable at the time of manufacture, Rule 6(3) will not be applicable . As regards judgments relied upon by the Ld. A.R I observed that in none of the case law, the issue of exemption notification which is end use based exemption ws dealt with, therefore, ratio of the decisions relied upon by the learned AR are not applicable. As per my above discussion, impugned order is set aside, and appeal is allowed with consequential relied, if any, in accordance with law."

4.16 In the present case the LPG which emerges during the refining process is not per se the exempted product. The respondent cleared LPG by charging duty and also cleared the same by exemption notification therefore in the absence of two different product being manufactured and cleared, one being chargeable to duty and another being exempted the provision of rule 6 (2) does not apply. In view of the above judgments, reversal of Cenvat Credit under rule 6 (3) of CCR is not warranted, as the same applies only in a case when the manufacturer opts not to maintain a separate account. The respondent's submission made without prejudice has force relying on the judgment of Sobha Developers Ltd -2012 (276) ELT 214 (T.) which was affirmed by Hon'ble Karnataka High Court. The Hon'ble Tribunal in that case referring to several other judgments held that

demand /restriction under rule 6 of CCR not applicable when services are provided availing the conditional exemption under notification 4/2004-ST dated 31.03.2004 read with rule 25 of SEZ Act, 2005. Similar view was expressed by Hon'ble Rajasthan High Court in Hindustan Zinc Limited-(Supra) wherein it was held that condition regarding reversal of Cenvat credit under rule 57 CC of Central Excise Rules. (pari- materia to rule 6 of CCR) does not apply unless exemption from payment of duty was to the goods per se.

4.17 Without prejudice to our above independent finding, we find that the respondent have also made alternative submission that the LPG emerges during the course of manufacture other dutiable goods i.e. MS, HSD, ATF etc unavoidably, therefore the same is a by-product. Countering this submission in the written submission filed by Learned AR raised objection that firstly the submission was filed by the respondent belatedly as against the time given by the bench. Secondly the issue of LPG being a by-product is the matter of fact which was taken first time before this tribunal therefore the same should not be entertained. On this preliminary objection, we are of the view that even though the respondents filed by the submission belatedly but before the passing the order in the interest of principle of natural justice the same has to be considered by us before arriving to the conclusion. Therefore the objection on this point is not sustainable. As regards the objection that the issue of by-product is taken first time, we find that even before the Commissioner (Appeals) also the various judgments on the issue of by-product has been discussed and the issue that whether the by-product attracts Rule 6 or otherwise is a question of law which can be taken at any stage. Therefore, considering this issue being legal we consider the same. We find that the LPG emerged unavoidably during the course of manufacture of other dutiable goods therefore the same is nothing but by-product. In this regard we have examined the nature of LPG on the website energypedia.info gives the details on LPG as under:

1. How is LPG produced?

LPG is a by-product of natural gas and oil extraction and crude oil refining. Around 60% of LPG stocks in the last years have been separated from raw gas and raw oil during the extraction of natural gas and from the earth, and remaining 40% have been a by-product when crude oil is refined.

From the above detail of website energypedia.info it is clear that LPG is a by-product generated during the refining of crude oil. The appellant in their written submission gave a chart of various products including the LPG whereby it reveals that generation of LPG in the course of manufacture comes to 0.64% in 2015-16 and 0.38% in 2016-17 of total assessable value of all the products. This percentage shows that the miniscule part of the entire manufacturing is LPG. This also supports that the LPG is a by-product arising unavoidably during the course of manufacture of other dutiable goods.

4.15 As per the Cambridge Dictionary, "by product means something that is

produced as a result of making something else, or something that unexpected that happens as a result of something else". In the present case LPG is produced as a result of making refined oil namely MS, HSD, ATF etc. it is also a fact that LPG is generated unexpectedly only as a result of manufacturing of refined oil. Therefore, in our view of the LPG is a by-product. The contention of the revenue is that the LPG is a product which is one of all other product as Ms, HSD, ATF etc. There is no dispute that by product can be an excisable goods at par with the main excisable goods but whether the product is byproduct or product is determined only on the basis of the process of manufacturing and if in the process of manufacturing any byproduct is generated during the process of manufacture of other product due to this generating in the process itself even though the same is excisable goods as per Central excise Tariff but due to its nature of arising in the process the same is called by product. Therefore even though the LPG is excisable goods but emerging unavoidably in the course of manufacturing of other main product i.e. Ms, HSD and ATF, etc. the LPG is a by-product.

5. Despite our above finding as regard by product, on the issue that how the product can be constitute as a by-product, the Larger bench of this tribunal has considered in the case of Alkali Manufacture Association of India vs. Designated Authority, DGAD, MOF- 2016 (342) ELT 465(Tri.Del). The relevant extract of the judgment is reproduced.

"14. We have heard all the sides as above and perused the appeal records. We have also carefully examined the written submissions made by the parties. These appeals are considered afresh in line with the direction of the Hon'ble Supreme Court's order dated 7-1-2016. The Hon'ble Supreme Court directed for a fresh consideration of the status of chlorine emerging during the manufacture of caustic soda. This is relevant to arrive at correct methods of costing having direct bearing on the NIP and thereafter on the AD duty. The central point of dispute is whether or not the chlorine emerging during the process of manufacture of subject goods has "Equal Economic Importance". In order to consider chlorine a joint product of the status equal to caustic soda we have to examine the guidelines as stipulated in Para 12 of Schedule -III of 1967 Rules. The said para reads as under :

"12. Joint products - Where more than one product which is of equal economic importance arises from process, the cost up to the point of separation of products shall be apportioned to joint products on reasonable and equitable basis and shall be applied consistently. The basis on which such joint costs are apportioned to different products arising from the process shall be indicated in the cost records".

15. We note that the term "Equal Economic Importance" has not been defined. The plain meaning of the same is that when more than one product emerge during the common manufacturing process, two or more those can be considered to have "Equal Economic Importance" if they give equal economic return or

monetary benefit to the producer. In such situation these products can be considered as joint/co-products. As per Dictionary of Accounting by Jonathan Law - 2010 (Oxford University Press) a main product is a product of a process that has the greatest economic significance. Other products of secondary economic importance are regarded as by-products. However, if all products have equal importance they are regarded as joint products. Keeping this in mind we examine the various submissions made by parties as above. Chlorine and caustic soda are two of the most important inorganic chemicals having industrial use. They are together normally referred to as chlor-alkali. Chlorine is largely used in the synthesis of chlorinated organic compound. It is difficult to store and transport economically and hence, it is generally produced near the consumer industry. We note that the DI has not evolved a level of total integration for downstream usage of chlorine for manufacturing value added derivatives in the vinyl line or otherwise. The economic importance of chlorine for the DI cannot be considered equal to caustic soda. In other words, even if chlorine has fluctuating price, showing upward trend during certain times, cannot economically realise that much benefit to the producer in India as equal to caustic soda. Admittedly, chlorine is of economic importance and the producers do realise significant benefit by sale or partly by captive consumption in making derivatives chemicals. However, it is clear, based on the evidence placed before us that the integrated downstream manufacture resulting in economic consumption of substantial quantum of chlorine in the DI has not reached a level which will make chlorine a product of "Equal Economic Importance" to the producer. This is mainly due to constraint in full usage of chlorine captively in the vinyl chain and the difficulty in storing and transporting the said product. It is also linked to the demand and capacity to absorb the downstream products made by PVC, etc., in the domestic economy. We note that various major units in DI, as submitted by the Id. Counsel for the DI, have been selling substantial portion of chlorine, not consuming the same for value added downstream products. Considering the constraints in storage and transport and also lack of integrated capacity to use, the realisation towards such sale only can be considered to fix the economic importance of chlorine. Based on the submissions made by the parties, admittedly, such realisation will not give chlorine the status of "Equal Economic Importance" when compared to the subject goods. Further, fluctuation in chlorine price even substantially increase during certain times do not make chlorine as a product of equal importance for DI.

16. We have perused the Cost Audit reports of units of some of the DI. Chlorine has been consistently treated as by-product and the Cost Accounting Standards applicable to such treatment have been applied. The realisation out of chlorine produced shows that the position of "Equal Economic Importance" cannot be given to chlorine in the Indian context. After careful consideration of all the submissions made by the parties it is evident that chlorine was not of "Equal Economic Importance" to the DI as compared to caustic soda and thus cannot be treated as joint product. As such, we find that treating chlorine as a by-product

in the analysis and to arrive at a finding by the DA is justified. As such, the appeals filed challenging the finding of the DA and consequent Notifications are dismissed."

5.2 In view of the above judgment one of the aspect to be considered after holding the product as byproduct is principle of Equal economic Importance. in the present case as discussed above the value of LPG cleared under Exemption during 2015-2016 and 2016-2017 the meager part i.e. 0.64% and 0.38% respectively of cumulative value of all the final products cleared from the its refinery therefore, applying the equal economic importance also the LPG is a byproduct.

5.3 The CBEC's Manual at Para 3.7 of Chapter 5 is relevant in this matter which is reproduced below:

"3.7 CENVAT Credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product. Similarly, Cenvat is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that Cenvat credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly."

As per the above Para of CBEC's Manual since cenvat credit is admissible on the input contained in byproduct the same cannot be denied on by applying Rule 6 of Cenvat Credit Rules, 2004. In the case of byproduct, non applicability of Rule 6 has been decided in catena of judgments some of those judgments are as follows:

- ? Hitech Carbon- 2018 (17) GSTL 398 (ALL.)
- ? Nestle India Ltd - 2017 (349) ELT 171
- ? Garware Polyester Ltd - 2017 (6) GSTL 488 (Tri. Mum)
- ? Sterling Biotech Ltd - Final Order No1189-1193/2009 dated 07.09.2009
- ? Balrampur Chini Mills Ltd - 2019 (368) ELT 276 (All)
- ? Anil Products Ltd - 2017 (346) ELT 573 (Guj.)
- ? N.S Ispat Pvt Ltd - 2016 (335) ELT 540 (Tri.Del)
- ? JSW Steel Ltd- 2016 (332) ELT 189 (Tri. Mum)
- ? Goyal Proteins Ltd 2015 (325) ELT 165 (Tri. Del)
- ? Cadbury India Ltd - 015 (322) ELT 765 (Tri. Mum)
- ? Advance Detergents Ltd - 2015 (322) ELT 508 (Mad.)
- ? Aarti Drugs Ltd - 2009 (240) ELT A40 (Bom.)
- ? Indian Iron Steel Co. Ltd - 2008 (227) ELT 389 (Tri.Kol)

? Hindustan Zinc Ltd - 2014 (303) ELT 321 (SC)

? Nirma Ltd - 2012 (276) ELT 283 (tri.Ahd)

? Bajaj Hindustan Ltd - 2012 (286) ELT 397 (Tri. Del)

? Nirma Ltd - 2012 (81) ELT 654 (Guj.)

5.4 In view of the above judgments it is settled law that in case of byproduct Rule 6 has no application. We further find that the objective of Para 3.7 of CBEC Manual is that once the input or input services used in the manufacture of main product which is dutiable, it is sufficient to allow the entire credit for the reason that all the input and input services were used for manufacture of dutiable goods even if the small part of the byproduct is generated unavoidably. In the present case also the Input and Input services were used for manufacture of other dutiable goods i.e. MS, HSD, ATF, Naphtha, Fuel oil etc and the LPG emerged unavoidably. The Cenvat Credit cannot be reduced on the input and input services attributed to LPG. With this objective behind the Para 3.7 which is directly applicable in the present case, the respondent is not required to reverse cenvat credit in terms of Rule 6 of CCR on this ground.

5.5 As regard the various judgment relied upon by the Learned AR we are of the view that in all these judgments facts are different as compared to the facts of the present case. As regard the reliance of Learned AR in the case of Essar oil Limited (Supra) we find that very important argument that the LPG emerges in its refinery and there is no deliberate attempt to manufacture it and the reliance placed on Swadeshi Polytex Ltd and Sterling Gelatin was not advanced and the facts may not be similar in that case. It is settled law that decision is a authority only on the prepositions that it decides and not urged or considered there from. As regard the reliance made in the case of Chemito Technologies (Supra) it cannot be held that authority, as the same was rendered ex-parte without the assistance to the court in the said case being ex-parte, the judgment of the tribunal in the case of DCW were not cited before the Tribunal in deciding the said case. Therefore, the same is not good in law. The judgment of Nicholas Piramal (India) Ltd is not applicable to the facts of the present case as in the said case the input was used in manufacturing of two products viz. Vitamin A falling under Chapter heading 29.36 which is dutiable and animal food supplement falling under chapter heading 23.02 of the Schedule to the CETA 1985, which was exempted and which is not applicable to the facts of the present case.

5.6 As regard in the judgment of Sulochana Cotton Spinning Mills (Supra) neither the provisions of Rule 6(2) of CCR nor the argument that there have to be two different finished products for Rule 6(2) to apply was either canvassed or considered. Therefore, the ratio of the said judgment is not applicable to the facts of the present case. In the case of Kesar Enterprise Ltd (Supra) there were two different products viz IMFL which was non excisable and Rectified Spirits which was excisable but cleared at nil rate of duty which are not similar to the facts of the present case.

5.7 After going through all the judgments relied upon by the Learned AR, we find that facts being different of this case from the facts of the present case, the said judgments are not applicable to the present case.

6. As per our above discussion and finding we are of the view that respondents is not required to pay any amount under Rule 6(3) in respect of LPG cleared under exemption under PDS. Therefore, the amount paid by the respondent was liable to be refunded to them.

7. Accordingly we do not find any infirmity in the impugned order. The impugned orders are accordingly upheld and revenue's appeals are dismissed. CO also stands disposed of.

(Pronounced in the open court 11.10.2021)