

(2018) 07 RAJ CK 0156

In the Rajasthan High Court

Case No : Central/excise Appeal No. 131 of 2017

**Commissioner Of Central Goods And Service Tax @APPELLANT@Hash M/
s Medicamen Biotech Ltd**

Date of Decision : 11-07-2018

Acts Referred:

Central Excise Act, 1944 — Section 5A(1A)
Cenvat Credit Rules, 2004 — Rule 6(1), 6(6)
Central Excise Rules, 2002 — Rule 19

Citation : (2018) 07 RAJ CK 0156

Hon'ble Judges : Kalpesh Satyendra Jhaveri, J;Vijay Kumar Vyas, J

Bench : Division Bench

Advocate : Kinshuk Jain, R.K. Phillips, Nirmal kumar Goyal

Final Decision : Dismissed

Judgement

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the department confirming the order of the Commissioner (appeal) which has allowed the appeal of the assessee.

2. The facts of the case are that M/s Medicamen Biotech Ltd., SP1192, A&B, Phase-IV, Industrial Area, Bhiwadi, engaged in the manufacture of P

& P Medicine and Generic Medicine falling under Chapter Heading No.3003 of the Schedule to the Central Excise Tariff Act, 1985 appeared to be

liable to pay Central Excise Duty to the tune of Rs.33,18,196/- on account of wrong availment of Cenvat Credit on inputs used in exempted goods in

contravention of Rule 6(1) of Cenvat Credit Rules, 2004 (for short CCR, 2004).

The assessee have been manufacturing Life Saving Drugs and availing exemption benefit under Notification No.6/2006-CE dated 01.03.2006 as

amended. The assessee has been clearing life saving drugs for export under bond in addition to clearance in the domestic market. They were also

taking the credit in respect of inputs used in the manufacture of exempted life saving drugs on the basis of Sub-Rule 6 of Rule 6 of the CCR, 2004

cleared for export under bond as per Rule 19 of Central Excise Rules, 2002 (for short CER, 2002).

3. Counsel for the appellant Mr. Kinshuk Jain has taken through the order of the Tribunal and contended that subsection (1A) which was inserted on

13.5.2005 in section 5A of the Central Excise Act, 1944 reads as under:-

(1A) for the removal of doubts, it is hereby declared that where an exemption under subsection (1) in respect of any excisable goods from the whole

of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

3.1 He has further taken us to ground (F) of the appeal which reads as under:

F. That in the instant case period involved is April 2006 to March 2007 i.e. after 13.05.2005 and Notification No.6/2006-CE dated 01.03.2006 was

issued under sub-section (1) of Section 5A of the Central Excise Act, 1944. Therefore, the assessee was not at liberty to avail the benefit of above

said notification. Since the goods i.e. life saving drugs were unconditionally exempted, it was not the sweet will of the manufacturer to avail or not to

avail the same, rather, the manufacturer was bound to avail the exemption notification.

3.2 He contended that there was no bond given whereas the appellant has cleared by giving bond to the Department.Â He has emphasised on the observations of the original authority which reads as under:

3. â??The assessee has been manufacturing Life Saving Drugs and availing exemption benefit under Notification NO.6/2006-CE dated 01.03.2006 as

amended. The assessee has been clearing life saving drugs for export under bond in addition to clearance in the domestic market. They were also

taking the credit in respect of inputs used in the manufacture of exempted life saving drugs on the basis of SubRule 6 of Rule 6 of the Cenvat Credit

Rules, 2004 cleared for export under bond as per Rule 19 of Central Excise Rules 2002.

4. The assessee was not statutorily required to execute a Bond in the case of export of exempted goods (life saving drugs) as there is no duty

chargeable on the goods which was required to be safeguard by way of debiting

in the Bond. On plain reading of provisions of Rule 6(6) of the Cenvat Credit Rules, 2004. It appeared that the same area applicable to the goods which are dutiable and are moved without payment of duty for the reasons mentioned therein. Since the said goods manufactured by the assessee were exempted by virtue of aforesaid notification. It appeared that the case of the assessee is not covered under the said provisions and the assessee was not eligible to take Cenvat Credit in respect of inputs used in the manufacture of exempted goods which were exported. The irregular Cenvat credit so taken is utilized for payment of duty on clearance of other dutiable goods in the domestic market.

13. In this regard, I also refer sub-section(1A) which was inserted on 13.05.2005 in Section 5A of the Central Excise Act 1944 which reads as under:-

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section(1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

14. In case every manufacturer chooses not to opt the absolute exemption then in such case the purpose of the legislature granting full exemption

would be defeated and the benefit which is required to be passed on to the buyers of the goods would not reach to them. This appears not the intention

of the legislature while granting unconditional exemption to any of the goods.

3.3 He has also invited our attention to the order of the Tribunal and argued that the judgment sought to be relied upon by the Tribunal will not apply to the facts of the present case.

4. Counsel for the respondents has pointed that under Rule 6(6) of the Cenvat Credit Rules, 2004 sub-clause (v) reads as under:

6. The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods moved without payment of duty are either-

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.

5. Counsel for the respondent pointed out the notification dated 26th June, 2001 which is issued for export of excisable goods except in Nepal and

Bhutan without payment of duty under the same notification prior to the amendment in 5-A, the appellants were following the notification of 2001.

Further, in view of notification which was brought into force on 26.5.2006 sub-clause (iv) whereof reads as under:

“(iv) that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods

cleared by a hundred per cent export oriented undertaking, shall not be allowed under this notification;”

5.1 Further, he relied on the notification dated 28.6.2010 which has been issued for exemption in exportable under bond and relied upon the following

decisions:

1. M/s.Repro India Ltd. Vs. Union of India 6951 OF 2007 (HC BOM.) wherein it has been held as under :-

7. We may also consider the provisions of Rule 6 of the Cenvat Credit Rules, 2004. The relevant portion of Rule 6(6)(v) reads as under:“(6) The

provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either

(i).....

(ii).....

(iii).....

(iv).....

(v) cleared for export under bond in terms of provisions of the Central Excise Rules, 2002.”

The petitioners had manufactured both dutiable and exempted final product (packaged software and printed books respectively). The petitioner has

taken credit on input used in the manufacture of dutiable as well as exempted final products. If the exempted products are exported outside India the

provisions of Rule 6(6)(v) of the Cenvat Credit Rules are applicable. Therefore, the bar provided under Rule 6(1) and the liability created under Rule

6(3)(b) of the Cenvat Credit Rules, 2004 are not attracted. By denying to the petitioner from exporting the printed books under bond what the

respondents want to do is in fact to levy 10% on the sale price of the printed books in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004. In our

opinion this is wholly impermissible.

The provisions as now contained in Rule 6 of the Cenvat Credit Rules, 2004 were contained in Rule 57C and 57CC of the Central Excise Rules, 1944

as they stood prior to 1st April, 2000. From 1st April, 2000 till 30th June, 2001 similar provisions were contained in Rule 57AD of the Central Excise

Rules, 1944. In the context of these Rules circular dated 8th November, 2001 of the Ministry of Finance was issued. It dealt with the question whether

8% has to be paid on the sale price of exempted goods. Under Rule 6(3)(v) of Cenvat Credit Rules, 2004, 8% has been increased to 10%. The

relevant portion of the Circular dated 8th November, 2001 reads as under:-

Further, it is now clearly and specifically mentioned in Rule 57AD(4) that the provisions relating to non-availability of modvat credit and reversal @

8% is not applicable in case the exempted goods are cleared for export under bond in terms of the provisions of Rule 13. In the new rule 57AD, it has

been explicitly provided what was implicitly in erstwhile rule 57C and 57CC. Further, the present rule 57AD(4) clearly goes on to show that the

exempted goods are eligible to be exported under bond. To interpret otherwise will render the new rule "57AD(4)" redundant.

In view of the foregoing in this case the provisions of sub-rule 57C(1) are satisfied as stipulated under Rule 57C(2) as well as Rule 57CC(6) and there

was no need to comply with the provisions of rule 57CC(1).

Therefore, it is clear that an amount of 8% of the price of the goods exported is not required to be paid irrespective of whether the exported goods are

exempted or otherwise.

It would thus appear that the direction of the respondent No.2 to the petitioners to pay 10% even though printed books were exported is not legally

sustainable. It is only in the event the petitioners do not export the printed goods and do not maintain the account as contemplated by rule 6(2) the

petitioner would be required to pay 10% on the sale price of the printed books not so exported.

Even though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the

manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed

without payment of duty for export under bond in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit

Rules 2004 the petitioners are entitled to avail Cenvat Credit in respect of the inputs used in the manufacture of the final products being exported

irrespective of the fact that the final products are otherwise exempt. 9. We may also consider the various clauses of Rule 6(6) which would indicate

that they relate to goods which are wholly exempt from duty. Rule 6(6)(i) relates to supply to SEZ. These are wholly exempted from duty vide

Notification dated 19th October, 2001 and notification dated 22nd July, 2003. Rule 6(6)(ii) relates to supply of goods to Exported Oriented Units.

These are wholly exempt by Notification dated 31st March, 2003. Rule 6(6)(iii) relates to goods supplied to a unit located in Electronic Hardware

Technology Park or Software Technology Park. Such supplies are exempt from duty by Notification dated 31st March, 2003. Rule 6(6)(iv) relates to

supplies to United Nations or an international organisation for their official use. These are exempt by Notification No.108/95. Rule 6(6)(v) relates to

export under bond. Rule 6(6)(vi) relates to gold or silver arising during refining of copper. These are exempt from payment of duty by Notification

No.5/2006-CE dated 1st March, 2006. It would thus be clear that all the clauses of Rule 6(6) are enacted only to deal with the situation when the final

products are exempt from payment of duty. If a final product is not exempted from duty, Rule 6(1) is not attracted at all and hence Rule 6(6) is

unnecessary. Rule 6(6) is precisely needed only when the final products are exempt from payment of duty. In this context the Revenue itself has

accepted that under the provisions of Cenvat Credit Rules, 2002 there were provisions for removal of exempted goods under bond but the same was

not available with effect from 9th September, 2004 under Cenvat Credit Rules, 2004.

We may reproduce Rule 6(5) of the Cenvat Credit Rules 2002 which reads as follows:-

(5) The provisions of sub-rule (1), sub-rule (2), sub-rule (3) and sub-rule (4) shall not be applicable in case the exempted goods are either

(i) cleared to a unit in a free trade zone; or

(ii) cleared to a unit in a special economic zone; or

(iii) cleared to a hundred per cent export oriented undertaking; or

(iv) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or (v) supplied to the United Nations or an

international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the

Government of India in the Ministry of Finance (Department of Revenue No.108/95Central Excise, dated the 28th August, 1995, number GSR 602(E)

dated the 28th August, 1995; or vi) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.â??

We may reproduce Rule 6 (6) of the Cenvat Credit Rules, 2002, which read as under: ""The provisions of sub-rule (1), (2), (3) and (4) shall not be

applicable in case the excisable goods removed without payment of duty are either â?

(i) cleared to a unit in a special economic zone; or

(ii) cleared to a hundred per cent export oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware

Technology Park or Software Technology Park; or (iv) supplied to the United Nations or an international organization for their official use or supplied

to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance

(Department of Revenue No.108/95Central Excise, dated the 28th August, 1995, number G.S.R 602(E) dated the 28th August, 1995; or (v) cleared

for export under the items of the provisions of the Central Excise Rules, 2002; or (vi) gold or silver falling within Chapter 71 of the said First Schedule,

arising in the course of manufacture of copper or zinc by smelting.â??

A perusal of the aforesaid Rules would clearly show that sub-rule (i) to (vi) are identical and the difference in rule 6(6) of the Cenvat Credit Rules

2004 and Rule 6(5) of the Cenvat Credit Rules, 2002 is not relevant for the purpose of the present case. Rule 6(1), 6(2), 6(3) and 6(4) of the Cenvat

Credit Rules under Cenvat Credit Rules, 2002 as well as under the Cenvat Credit Rules 2004 remains the same. As noted earlier the object and

purpose of rule 6(6) of Cenvat Credit Rules, 2004 is to promote the policy of the Government that the benefit of duty paid on input is available as

credit in respect of certain exempted goods as well as the exempted goods exported under bond. The minor change in the wordings of Rule 6(6) of the

Cenvat Credit Rules, 2004 by using the term ""excisable goods"" instead of exempted goods is that the term â??exempted goodsâ?? may not cover

the dutiable goods which are exported under bond. Therefore, in order to widen and cover both dutiable and exempted goods exported under bond,

Rule 6(6) of Cenvat Credit Rules, 2004 uses the expression ""excisable goods"".

As an illustration, if a car which is dutiable is exported under bond without payment of duty there may be doubt as to whether credit on the inputs will be available, since the car is cleared without payment of duty under Rule 6(5) of Cenvat Credit Rules, 2002. It could be argued that it covers only the exempted goods exported and not dutiable goods exported. In order to cover such a situation also, Rule 6(6) of Cenvat Credit Rules, 2004 used the expression "excisable goods" which is wider to include both dutiable as well as exempted goods.

2. Union of India (UOI) vs. Sharp Menthol India Ltd. 2011 (270)ELT 212 (Bom.) wherein it has been held as under :-

23. In the present case, admittedly, the exempted menthol crystals have been cleared for exports under bond without payment of duty and, therefore,

the case of the Assessee would be covered under Rule 6(6)(v) of 2004 Rules and consequently Rule 6(1) to 6(4) of 2004 Rules would not be

applicable to the facts of the present case. In other words, in the present case, the credit of duty paid on menthol used in the manufacture of exempted

menthol crystals is allowable, because, exempted menthol crystals have been exported under bond without payment of duty.

27. The argument of the Revenue that in the present case, the credit of duty paid on menthol is not allowable or has lapsed for the reason that the duty

paid menthol has been used in the manufacture of exempted menthol crystals cannot be accepted, because, admittedly the exempted menthol crystals

have not been cleared for home consumption but have been cleared for export under bond and, therefore, Rule 6(1) to 6(4) of 2004 Rules would not

apply, but Rule 6(6)(v) would apply. In other words, non allow ability of input credit under Rule 6(1) to 6(4) of 2004 Rules is applicable only when the

inputs used in the manufacture of exempted final products are cleared for home consumption without payment of duty and not when exempted final

products are cleared for export without payment of duty under bond. In the present case, exempted menthol crystals has been exported without

payment of duty under bond and, therefore, the Assessee was entitled to take the credit of duty paid on menthol used in the manufacture of exempted

menthol and utilize that credit for paying duty on clearance of peppermint oil. Since peppermint oil was exported on payment of duty, the Assessee

was entitled to claim rebate of duty paid on exported peppermint oil under Rule

18 of the Central Excise Rules, 2002.

3. Commissioner of central excise vs. drish shoes ltd., 2010 (254) E.L.T. 417 wherein it has been held as under :-

11. The only difference between the Rules of 2002 and 2004 is that while in case of 2002 rules, exception clause contained in sub-rule (5) of Rule 6

was applicable in case of only exempted goods, while exception clause contained in subrule (6) of Rule 6 of 2004 rules, applies both to exempted

goods, as also goods subject to duty, because the term used in sub-rule (6) is ""excisable goods"" and not ""exempted goods"", as was the case in Rules of

2002.

4. Commissioner of C. Ex. and Cus., Aurangabad vs. Jolly Board Ltd. 2017 [50]S.T.R.131 (Bom.) wherein it has been held as under :-

7. These appeals can only be entertained on substantial questions of law. As far as contention of the learned counsel for the appellant about

observance of Rule 18 of the Central Excise Rules, 2002 is concerned, the same was not a subject matter of contention before the authorities or the

Tribunal nor is raised in the present appeal. Even otherwise, the subject matter involved in the present appeals was also the subject matter before the

Himachal Pradesh High Court in case of Commissioner of Central Excise v. Drish Shoes Ltd. (supra), where it has been held by the Himachal

Pradesh High Court that as under:

(16) The scheme of CENVAT Credit Rules, 2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows

that CENVAT credit/refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading

of Rule 3 and sub-rule (1) of Rule 6 of the CENVAT Credit Rules, 2002, as also the Rules of 2004, so as to avoid indirect double taxation on inputs.

However, this rule is not absolute. It is subject to Exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one

of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.

17. Sub-rule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in

case of dutiable goods. It appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for

CENVAT could not be claimed in respect of input of those goods, at least under the aforesaid exception clause. To overcome this kind of anomalous

situations, exception clause contained in sub-rule (6) if Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.

18. Learned Counsel for the appellant argued that term 'excisable goods' used in sub-rule (6) of Rule 6 of 2004 Rules, meant only dutiable goods.

Submission has been noticed only to be rejected.

19. A Division Bench at Bombay High Court in MANU/MH/1449/2007 : 2009 (235) E.L.T. 614 (Bom.), *Repro India Ltd. v. Union of India*, while

dealing with a similar situation and interpreting the provisions of Rule 6(5) if CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules,

2004, has held that expression ""excisable goods"" is wider than the expression ""exempted goods"", as it includes both dutiable and also exempted goods.

20. In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on

the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit

Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No. 1 is answered accordingly.

21. As regards question No. 2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final

products which are exempt from duty, can claim refund of CENVAT. So, this question is also answered against the appellant.

8. It would be clear that in the decision of the Himachal Pradesh High Court, the judgment of this Court in case of *Repro India Ltd. v. Union of India*

reported in MANU/MH/1449/2007 : 2009 (235) E.L.T. 614 (Bom.) is also relied, wherein it is held that expression ""excisable goods"" is wider than the

expression ""exempted goods"" as it includes both dutiable and also exempted goods.

9. It is also submitted by the learned counsel Mr. Ladda that the judgment of the Himachal Pradesh High Court in case of *Commissioner of Central*

Excise v. Drish Shoes Ltd. (supra) is confirmed by the Apex Court in Appeal No. 2887/2012. The learned counsel submits that the judgment in the

case of *Commissioner of Central Excise v. Drish Shoes Ltd.* (supra) may not assist the assessee as the said judgment does not consider execution of

bond for export of exempted goods.

10. Considering the fact that judgment in the case of Commissioner of Central Excise v. Drish Shoes Ltd. (supra) is confirmed by the Apex Court

involving similar issue, no substantial question of law arises in the present appeals. As such the appeals are dismissed. No costs. In view of dismissal

of the appeals, pending civil applications stand disposed of.

5. The Commissioner of Central Excise vs. Same Duetz Fahr India (P) Ltd. and Ors. 2017 [6] G.S.T.L. 453 wherein it has been held as under :-

12.3. Therefore, the question, which arises is, would sub-rule (6) of Rule (6) of the 2004 Rules, would trump in the instant case, the provisions of sub-rule (1) of Rule 6.

13. It is no one's case that the goods manufactured by the Assessee were not excisable. Though the goods were excisable, the only reason, that

Central Excise duty was not paid or was not payable, was, on account of the provisions of the 2006 notification. Therefore, upon executing the bond,

the Assessee removed what were otherwise excisable goods without payment of duty. 13.1. One of the exceptions to sub-rule (1) of Rule 6 is a

circumstance, where excisable goods are exported pursuant to the execution of bond, in terms of Central Excise Rules 2002.

14. Therefore, on a plain reading, we see no difficulty in the Assessee's case falling in the exception carved out in Rule 6(6)(v) of the 2004 Rules. The

purpose, apparently, behind carving out of such exceptions appears to be, to neutralise the impact of the duties paid by the exporters, with regard to

input tax, whether paid on goods or services. The objective, obviously, is not to export duties, so as to provide much needed competitive edge to Indian

exporter in foreign markets.

14.1. India is a party to the WTO regime and, therefore, it is permissible for it to neutralise duties on inputs, whether in the form of goods or services.

15. Thus, having regard to the Rules, qua which we have rendered our view above, and the perceptible object as to why sub-rule (6) of Rule 6 of the

2004 Rules has been put in place, we are not inclined to interfere with the impugned judgment rendered by the Tribunal.

16. Accordingly, the appeal of the Revenue is dismissed. The question of law, as framed, is answered in favour of the Assessee and against the

Revenue. However, there will be no order as to costs.

6. Commissioner of Customs, Bangalore vs. Spice Telecom, Bangalore 2006 (203)ELT 538 (S.C.) wherein it has been held as under :-

16. Revenue has relied upon the subsequent Notification No. 21/2002 dated 1.3.2002. The subsequent notification defines the scope of ancillary

equipment for BTS by restricting the entry to only three equipments, namely, (i) Cellular repeaters,(ii) Amplifiers and iii) Waves Guides (List 22 S.

No. 239 of the Table). Radio terminals in this notification have not been considered as ancillary equipment of BTS. Revenue contends that Notification

No. 21/2002 is clarificatory in nature and would be applicable to the radio terminals imported by the respondent in the year 1998 as well. We do not

find any substance in this submission. The subsequent notification which defines the scope of ancillary equipment is effective only from 1.3.2002 and

does not have retrospective effect. Respondent's clearance pertains to July, 1998 and the Notification No. 21/2002 has come into effect with effect

from 1.3.2002. It would not apply to the goods which have already been cleared. Notification No. 21/2002 cannot be given retrospective effect. In the

absence of any express provision contained in the notification ordinarily it cannot be presumed that the same is retrospective in nature. Learned

Counsel for the Revenue has failed to show that the subsequent notification is clarificatory in nature. Incidentally, it may be mentioned that with regard

to the identical goods imported through Delhi, wherein the items were classified under the same heading, Delhi Customs House extended the benefit

of the said notifications to the respondent.

6. Taking into consideration the above facts, counsel for the respondent contended that no substantial question of law arise in this appeal.

7. We have heard counsel for both the parties.

8. Before proceeding with the matter, it will not be out of placeto mention that the substantial question of which framed by counsel for the appellant

reads as under:-

1.Whether the Honâ??ble CESTAT is correct in allowing the Cenvat credit availed on the raw material used for the manufacture of the exempted

goods which have been exported under bond?â??

9. While considering the matter, the Commissioner (Appeal) has given detail reasons and the Tribunal has only followed the Bombay High Court

decision in case of Repro India Ltd. Vs. Union of India â?" 2009(235) ELT 614

(Bom.) and also another decision.

9.1 In our considered opinion, the Tribunal has also considered the judgment of Union of India Vs. Sharp Menthol India Ltd. 2011(27) ELT 2012

which was upheld by the Honâ??ble Supreme Court in Union of India Vs. Sharp Menthol India Ltd. - 2015 (320) ELT A 104(SC) and there is

nothing on record to show that the Bombay High Court decision is diluted.Â On the contrary, in one of the matter, SLP which came to be decided on

12th July, 2016 in Civil Appeal No.2887/2012 (Commissioner of Central Excise, Chandigarh Vs. M/s Drish Shoes Ltd.), the judgment of Bombay High

Court has been approved.

10. Taking into consideration the above fact-situation, in our considered opinion, having paid excise duty on the import of rawmaterial, the assessee-

respondent is entitled for exemption of the Cenveat Credit under Rule 6(6) clause (v) of the Cenvat Credit Rules, 2004.

11. In that view of the matter, we are in complete agreement with the view taken by the Commissioner (Appeals) and the Tribunal.Â No substantial

question of law arises in this appeal.

12. Hence the appeal stands dismissed.