
(2023) 09 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.76014 Of 2015, 75048 Of 2017

M/s. Dabur India Limited

APPELLANT

Vs

Commissioner Of Central Excise, Kolkata-V

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(d), 6, 6(3), 6(3)(a), 6(3A), 6(3)(i), 6(3)(ii)
Central Excise Act, 1944 — Section 2(d)

Citation : (2023) 09 CESTAT CK 0023

Hon'ble Judges : Ashok Jindal, Member (J);K. Anpazhakan, Member(T)

Bench : Division Bench

Advocate : B.L. Narasimhan, Rahul Tangri, Payal Bharwani, P.K.Ghosh

Final Decision : Allowed

Judgement

Ashok Jindal, Member (J)

1. Both the appeals are having common issue therefore both are decided by a common order.

2. The facts of the case are that the appellant are having their unit at Narendrapur and engaged in the manufacturing of Glucose which is dutiable and Madhu/Honey against which no rate of duty was specified in the First Schedule to the CETA. Apart from the aforementioned activities, the appellant was also engaged in trading goods manufactured by third-parties, which is an exempt service.

3. In order to comply with the provisions of Cenvat Credit Rules, 2004, the appellant did not avail credit of common input services received by them in their unit provisionally on a monthly basis, but finally availed such credit only in the next financial year after actualization of the turnover numbers of such financial year. This continued upto 31.03.2015 and thereafter the appellant started availing the cenvat credit of common input services availed by them on provisional basis every month, which was finalized in the month of June of next

year in terms of Rules 6(3A) of Cenvat Credit Rules, 2004. These facts are not in dispute.

4. In addition to the above, the corporate office of the appellant located at Ghaziabad and having a registration as Input Service Distributor (ISD) and was distributing credit of service tax paid on advertisement and other services namely CFA, Management Consultant, BAS, Transportation, Supply of Tangible Goods etc. received by them, to all the units located at Baddi, Uttaranchal, Sahibabad, Jammu, Silvasa, Alwar and the appellant. The issue relates to credit availed by the appellant for credit distributed by the ISD. The corporate office upto 31.03.2014 distribute credit of advertisement services pertaining to honey. The credit of advertisement services was distributed only to the extent it pertained to the taxable Glucose only.

As regards the credit on other services, the ISD applied the provisions of Rule 6(3)(ii) of the CCR, 2004 and apportioned the remaining credit in the Production Value Ratio of all the units. After such apportionment, only so much credit as proportionate to the taxable turnover of all the units was distributed by the ISD. The credits not distributed by ISD were reversed at its end. For the period post 2014, except the credit pertaining to trading activity, the ISD distributed the entire credit among all the units in their Production Value Ratio. Thereafter, the appellant applied for the provisions of Rule 6(3)(ii) of the CCR on cenvat credit distributed by the ISD in the ratio of taxable turnover to total turnover during the preceding financial year, on provisional basis. Such availment by the appellant was adjusted basis the final ratio of taxable turnover to total turnover of the financial year, by 30th June of the next financial year. The appellant availed the total credit on advertisement and other services during the period March 2011 to July 2014 of Rs.2,51,95,770/- and during the period from August 2014 to June 2015 Rs.98,55,743/-. Despite following the methodology of availing credit pertaining only to dutiable turnover of the appellant, the revenue issued two show cause notices proposing to recover 6% of the value of honey treating it an exempted goods cleared by the appellant during the impugned period under Rule 6(3)(i) of the CCR, 2004. The appellant contested the issue, but by way of the impugned orders, the demand was confirmed. Against the said orders, the appellant is in appeal before us.

5. The appellant submits that the issue is no more res integra since the demand in respect of the subsequent period has already been dropped by the adjudicating authority.

6. He further submitted that rule 6 of the CCR, 2004 is not invocable in the facts of this case, as honey is non-excisable. It is his submission that Rule 6 of CCR, 2004 provides that cenvat credit shall not be allowed on inputs and input services used in or in relation to exempted goods or exempted services and such credit not allowed shall be calculated and paid in terms of the provisions of sub-rule 2 or 3 of the rules. It is his submission that Rule 2(d) of the CCR defines exempted goods as excisable goods which are exempt from the whole of the duty

of excise leviable thereon. Section 2(d) of the Central Excise Act, 1944 defines the terms 'excisable goods' as goods specified in the First and Second Schedule of the CETA as being subject to duty of excise including salt and honey is classifiable under CTH 04090000 of the CETA against which no rate of duty has been specified, therefore, honey is non-excisable inasmuch as it is not chargeable to any rate of duty including NIL rate. Leaving a column blank cannot be equated with NIL. Accordingly, honey would not qualify as exempted goods. Therefore, the provisions of rule 6 will not be get attracted thereon. Accordingly, the entire demand so confirmed under Rule 6, on the ground that the honey is excisable and exempted product, ought to be dropped on this ground alone. To support his argument, he relied upon the decision of Hon'ble Allahabad High Court in the case of Gularia Chini Mills v. UOI [2014 (34) S.T.R. 175(All.) [affirmed by the Hon'ble Supreme Court as reported in 2015 (322) ELT 769 (S.C.)] and in the case of Rejasthan Renewable Energy Corporation Limited v. CCE, Jaipur [2023 (4) TMI 440 (CESTAT-New Delhi)]. He also relied on the CBEC Circular No.345/61/97-CX dated 23.10.1997.

7. He also submitted that the revenue cannot force the appellant to choose the option under rule 6(3)(i) of the CCR and pay 6% of the value of exempted goods. As per said rule, the appellant is required to pay 6% of the exempted turnover or can reverse proportionate cenvat credit of the exempted turnover. He further submits that the appellant has reversed the cenvat credit proportionate to honey at ISD level for the period upto 31.03.2014 and thereafter at the unit level. Therefore, the requirement of paying 6% of value of honey under rule 6(3)(i) of CCR, 2004 does not arise.

8. He also submitted that extended period of limitation is not invocable, interest is not chargeable and penalty is not imposable.

9. On the other hand, the Ld.AR for the department reiterated the findings of the impugned order.

10. Heard the parties, considered the submissions.

11. The facts are not disputed by either of the sides that the appellant is manufacturing Glucose and Honey/Madhu whereas Glucose is dutiable and Honey although excisable, but no rate of duty is mentioned in the tariff. Further, for the period up to 31st March 2014, the ISD was not disputing the advertisement services pertaining to the Honey, but for the advertisement services, they are disputing the credit pertaining to Glucose which is dutiable. As regards credit of other services ISD applied provisions of rule 6(3)(ii) of Cenvat Credit Rules, 2004 and apportioned the remaining credit in production value ratio of all the units and such apportionment, only so much credit as proportionate to the taxable turnover of all the units was distributed by the ISD. The credit was not distributed by ISD was reversed at its end. For period post 01.04.2014 except the credit pertained to trading activity, the ISD distributed the entire credit among all the units in their production value ratio and thereafter the appellant

themselves applied the provisions of rule 6(3)(ii) of CCR on cenvat credit distributed by the ISD in the ratio of taxable turnover to the total turnover during the preceding financial year on provisional basis and the same was adjusted by the appellant on the basis of final ratio by 30th June of the next financial year. These facts are not in dispute and observing the same, for the period July 2015 to January 2017 and pre-show cause notice consultation was done by issuance of the letter dated 08.06.2017 by the revenue and the said issue has been settled by dropping the CERA objection raised against the appellant vide order dated 03.08.2017. The pre-show cause notice consultation letter issued to the appellant is extracted hereinbelow and the order dropping the proceedings against the appellant is also extracted below for better appreciation:-

GOVERNMENT OF INDIA

CENTRAL EXCISE COMMISSIONERATE: KOLKATA-V

OFFICE OF THE COMMISSIONER

KENDRIYA UTPAD SHULK BHAWAN, 180, RAJDANGA MAIN ROAD,

SHANTIPALLY: KOLKATA-700107

FAX NO.033-2441-6917, PHONE NO.0332441-6925 Email-kolkata@nic.in

C.o.V(15)19/Adjn/CE/Dabur/Kol-V/17-18/3406

Date : 08 JUN2017

To

M/s. Dabur India Limited,

9, N.S.C. Bose Road, Narendrapur,

Dist. South 24 Parganas, Kolakta-700103

Dear Sir,

Sub : M/s. Dabur India Limited - Pre-Show Cause Notice/State of

Demand consultant – regarding

Please refer to your letter dated 22.02.2017 on the issue of irregular availment of CENVAT Credit on Input Service in contravention to the Rule 6(3A) of Cenvat Credit Rules, 2004 in which the Department had earlier issued several Show-cause Notices to you as well as subsequently adjusted the said show-cause notices by confirming the demand.

2. In this context, it is informed that a draft show cause notice/statement of demand for an amount of Rs.7,94,15,487/- demanding payment of duty for irregularly availed CENVAT Credit for the period from July, 2015 to January, 2017 has been proposed to be issued to you.

3. However, as a step towards trade facilitation and promoting voluntary compliance as well as negating the necessity of issuance of Show Cause Notice in the instant case, the Commissioner of Central Excise, Kolkata-V Commissionerate, is pleased to invite you on 12.06.2017 at 11.30 hrs. for a consultation with regard to the subject issue at his chamber at 3rd Floor, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata-700107.

Yours sincerely,

(Vevekanand Maurya)

Assistant Commissioner(Adjudication),

Central Excise, HQRS,

Kolkata-V Commissionerate

GOVERNMENT OF INDIA

KOLKATA SOUTH CGST & CX : KOLKATA

GST BHAVAN : 180, RAJANGA MAIN ROAD, : SHANTIPALLY: KOLKATA-700107

C.No.V(15)19/Adjn/CE/Dabur/Kol-V/17-18/3482

Date: 03.8.17

To

The Assistant Commissioner,

Excise Appeal No.76014 of 2015 AND

Excise Appeal No.75048 of 2017

CGST & CX,

Division – Bishnupur,

Kolkata-South Commissionerate

Sir,

Sub: Draft Statement 2.4.5. M/s. Dabur India Ltd. – for the period 07/2005 to 01/2017 proposing demand of Rs.7,94,15,487/- - reg.

Please refer to your office letter C.No.V(15)09/Adjn/Dabur/CE/BPD/Kol-V/17/18/894 dated 29.05.2017 wherein a Draft Statement of Demand w.r.t. M/s. Dabur India Ltd. for the period 07/2015 to 01/2017 for a demand of Rs.7,94,15,487/- was proposed.

2. In this context, it is informed that as per the opinion of the competent authority, since the assessee has begun following the procedure as prescribed under Rule 6(3) of the CENVAT Credit Rules, 2004, the proposed draft statement

on the basis of CERA Objection does not appear to hold merit.

3. This is for your kind information, please.

Yours sincerely,

(Anup Das)

Assistant Commissioner of Central Tax,

HQRS, Adjudication Branch,

Kolkata South CGST & CX Commissionerate

12. On going through the said pre-show cause notice consultation letter and dropping proceeding against the appellant, it is clear that the appellant is reversing proportionate cenvat credit, as per Rule 6(3)(a) therefore appellant is not required to pay 6% of the value of Honey cleared by them.

13. We further find force in the argument advanced by the Ld.Counsel for the appellant that Honey is not an exempted goods. In fact, no duty is payable on honey as the same is classifiable under CTH 0409 00 00 of CETA, 1985, where no rate of duty is mentioned. That does not mean that Honey becomes exempted as held by the Hon'ble Allahabad High Court in the case of Gularia Chini Mills (supra), wherein the Hon'ble High Court has observed as under :-

"32. The definition of 'excisable goods' given in Section 2(d) means the goods, which are specified in the First or Second Schedule and which are subjected to duty of excise, can only be treated as excisable goods. A proposition has also been accepted by the Commissioner in its findings. A perusal of Section 2(d) of Central Excise Act shows that the excisable goods are only those goods which are subjected to duty of excise as specified in the First Schedule or Second Schedule of the Central Excise Tariff Act. Since Column of rate of duty is blank, therefore, in view of Section 2 of the Central Excise Tariff Act, 1985, electrical energy is not being subjected to excise duty for the purposes of being excisable goods under Section 2(d) of the Central Excise Act. Furthermore, Rule 6 of the 2004 Rules, which is applicable only to excisable goods, can alone be treated as exempted goods for the purposes of Rule 6(3) of 2004 Rules, does not apply to electrical energy."

The said order was affirmed by the Hon'ble Supreme Court in the case of Union of India v. DSCL Sugar Ltd. [2015 (322) E.L.T. 769 (S.C.)].

14. Therefore, we hold that the provisions of rule 6 are not applicable to the facts of this case as Honey is not an exempted goods. In that circumstances, we hold that the proceedings against the appellant are not sustainable under Rule 6 of the Cenvat Credit Rules, 2004.

15. In view of these observations, we hold the impugned orders deserve no merits, accordingly the same are set aside and the appeals are allowed with consequential relief, if any.