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Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10947 of 2018
(Arising out of OIA-VAD-EXCUS-002-APP-570-2017-18 dated 31/10/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Lanxess India Pvt Ltd **......Appellant**
Plot No. 748/2/A, 748/3,, 748/4/A, 748/4/B, Gidc Jhagadia,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat- 390023

APPEARANCE:
Shri Anand Nainawati, Advocate for the Appellant
Shri R.P Parekh, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No . A/ 10036 /2022

DATE OF HEARING: 21.09.2021
DATE OF DECISION: 18.01.2022

RAMESH NAIR

The brief facts of the case are that M/s. Lanxess India Private Limited (hereinafter referred to as "the Appellants'') are engaged in the manufacture of Chemicals like Phenylenediamine, Antioxidants for Rubber, Ion-Exchange Resins of Polymerisation Type etc. falling under Chapters 29,38 & 39 respectively of the First Schedule to the Central Excise Tariff Act, 1985 at their factory located at Jhagadia, Bharuch. In the course of Manufacture of the Ion- Exchange resins, Di-Ethyl Triamine Z (DETA) and Amine Z arise which are low in purity. In order to recover fresh DETA and fresh Amine Z of high purity from the DETA and Amine Z arising in the manufacturing process of Ion-Exchange resins, the appellants are sending the DETA and Amine Z for distillation to job workers in addition to other processes for which other Chemicals are sent to the job workers. The appellants are duly following the procedure laid down under rule 4 (5)(a) Central Excise Rules,2004 with respect to Cenvat Credit availed on such Chemicals sent to the job workers

for carrying out further process. DETA and Amine Z sent to the job workers are stored and sent in a water base due to the nature of these chemicals. Before sending the Chemicals to the job workers for distillation, the appellants conduct a laboratory test and test report indicates the percentage portion of water (Concentration) contained in the chemicals sent to the job workers. Illustrative copies of the laboratory test report for chemicals cleared to job workers are marked and enclosed with this appeal. The said chemicals after testing in the laboratory and generating of test report as discussed above, are sent to the job worker under the cover of job work challans prescribed under Rule 4(5)(a) of the Cenvat Credit Rules,2004. The job work challans are also accompanied with the test reports indicating concentration of the chemicals in percentage as discussed supra. Once the distillation of the chemicals is completed by the job workers the same are returned to the appellants. The appellants allow wastage of 10-20% to the job workers which mainly consist of the water base and remaining 80-90% of the supplied pure element is required to be returned by the job workers. As per the agreement the job worker is required to provide a yield of 85% +/-5%.

1.2 In the Above factual background during December 2013-March2015 appellants clear inputs weighing 2,29,794 kgs(including water base) to the job worker M/s. Keaum Organics Pvt. Ltd. and Excise Duty was paid on this entire quantity of 2,29,794 kgs although the same contained water base also. The pure material of chemical in such a total quantity of 2,29,794 kgs was 1,08,927 kgs (approximately 47%) only. As per the agreement, the quantity weighing 93,982 kgs (86.28% of input quantities sent) was returned within 180 days to the appellant. The remaining quantity 14,945 kgs was waste material which mainly consists of contaminated water. If at no point of time for inputs returned by the job worker for more than 180

days the material not returned back is only wastage which remains after the process of inputs.

1.3 The CERA audit conducted by the Central Excise Department where an objection was raised regarding receipt of such quantities of input from job workers M/s. Keaum Organics Pvt. Ltd. after expiry of 180 days. The appellant debited the Cenvat Credit of Rs. 20,11,362/- out of abundant precaution. The credit was reversed prior to utilization. As per audit report it was observed that the appellant has failed to reverse the amount of Rs. 20,10,576/- for inputs which were not received within 180 days. Thereafter the show cause notice dated 25.01.2016 was issued to the appellant proposing to deny and recover Cenvat credit of Rs. 20,10,576/-along with interest and penalty on the following grounds.

(i) That the goods involving Cenvat credit of Rs. 19,78,247/- were sent to the job worker were not received back within 180 days from the date of their being sent to the job workers.

(ii) Even after 180 days there was short-receipt of goods involving Cenvat credit of Rs. 32,329/-. The adjudicating authority adjudicated vide Order-In-Original dated 31.08.2016 whereby demand of Cenvat credit of Rs. 20,10,576/- was confirmed along with interest and penalty.

1.4 The appellant filed an appeal before the Commissioner (Appeals). The Learned Commissioner (Appeals) vide impugned Order-In-Appeal dated 31.10.2017 upheld the demand confirmed in Order-In-Original dated 31.08.2016. Therefore, the present appeal.

2. Shri. Anand Nainawati, Learned Counsel appearing on behalf of the appellant without prejudice to any other submission, submits that the inputs were received within a period of 180 days and there is no delayed receipt of the inputs sent to the job workers. Out of the total demand of 20,10,576/- the demand of 19,78,247/- on ground of delayed receipt of inputs is

factually and legally incorrect. He submits that the inputs which were sent for job work needs to be stored and transported in a water base. Due to the water base, the concentration of these chemicals when sent to the job worker is only 47% (approx.) and the rest is water. The same can be verified from the laboratory test report marked and enclosed with the appeal. These chemicals along with the water base were sent to the job worker for distillation and recovery of pure DETA and Amine Z. As per the agreement with the job worker, the job worker is required to return a yield of 85%(+/- 5%) of the chemical element. The required yield of 85% is to be returned to the appellant again in the water base. The remaining amount is wastage mainly consisting of contaminated water which is not fit for use.

2.1 The appellants during December 2013 to March 2015 sent 2,29,794 Kgs of material (including water base) out of which chemical element is 1,08,927 Kgs to M/s. Keaum Organics Pvt. Ltd. who generated a yield of 93,982 Kgs (excluding water base). The remaining 14,945 Kgs was residue material (including water base). The appellants submit that usually M/s. Keaum Organics Pvt. Ltd. does not return such waste residue. However, in the present case due to certain constraints, M/s. Keaum Organics Pvt. Ltd. returned 6400 Kgs of such waste material to the appellants for disposal vide a job work challan No. 26 dated 30.07.2015 instead of disposing the waste themselves. It was contended by the audit team that the said inputs were received beyond a period of 180 days. However, as submitted (supra), the material of 6400 Kgs returned by Keaum Organics after expiry of 180 days was only wastage since the yield of Rs 93,982 Kgs was already returned by them within 180 days.

2.2 He without prejudice submits that, even if it is assumed for the sake of argument that inputs were received after 180 days , the

entire situation is revenue neutral in as much as Rule 4(5)(a) of Cenvat Credit Rules, 2004 itself provides that the assessee can avail Cenvat Credit once the goods are received after 180 days. Thus, the demand of Rs.19, 78,247/- is revenue neutral in nature and is not maintainable.

2.3 As regard the remaining demand of Rs 2,60,886/- on the ground of short receipt of inputs from job workers even after 180 days , is not maintainable in as much as the same pertains to process loss at the end of the job worker. He submits that the appellant had sent 2,51,813 Kgs of material (including water base) and received back 2,48,038 Kgs of material (including water base). Thus, a shortage of 3775 Kgs was observed and Cenvat Credit of Rs. 2,60,886/- was demanded on such alleged short receipt of the inputs. He submits that such a shortage amounts to 2% of the total material quantity supplied to such job workers. The same is due to the vapour loss or loss of water from the water base during the process since the chemicals are stored and transported in a water base. It is settled law that Cenvat reversal cannot be demanded under Rule 4(5)(a) of Cenvat Credit Rules, 2004 on the process loss or wastage arising during the job work process since it is practically impossible to receive back the exact same quantity of inputs. The demand of Rs 2,60,886/- is also liable to be set aside on this ground.

2.4 He further submits that in the present case the entire situation is Revenue Neutral and where appellant has reversed the disputed Cenvat Credit even prior to issue of show cause notice. There is no malafide on the part of the appellant therefore extended period of limitation and penalty cannot be imposed in this case.

2.5 Without prejudice to his above submission he further submits that even if the entire demand of Cenvat credit is held to be sustainable, the appellant has reversed the same prior to utilisation. For the period after 01.04.2012 in view of the amendment of Rule 14 of Cenvat credit Rules,

2004. It is settled law that when the Cenvat credit is reversed prior to utilisation, the same amounts to not availing credit at all. The period involved in the present appeal is December 2013-March 2015 therefore the demand of interest and penalty thereon is not sustainable. In support of his above submission he placed reliance on the following judgments:-

- Mukund Ltd. v. CCE Mumbai-2019 (4) TMI 1144-CESTAT, Mumbai
- Amforge Industries Ltd. v. CCE-2021 (375) ELT 358 (T)
- CCE v. Rocket Engineering Corporation Ltd. -2008 (223) ELT 347 (Bom.)
- CCE v. Bharat Radiators Ltd.-2002 (148) ELT 1101 (T)
- Voltamp Transformers Ltd. v. CCE-2015 (329) ELT 380 (T)
- Rollex Electro Products P. Ltd. v. CCE-2016 (338) ELT 736 (T)
- Asianol Lunricants Ltd. v. CCE-2018 (2) TMI 10- CESTAT Kolkata
- BEML Ltd v. CCE-2021 (8) TMI 170-CESTAT Bangalore
- Zenith Machine Tools Pvt. Ltd. v. CCE-2010 (255) ELT 83 (T)
- Uttam Sucrotech Ltd v. CCE-2018 (7) TMI 1203-CESTAT
- Tata Motors Ltd v. CCE-2011 (264) ELT 385 (T)
- CCE v. Bombay Dyeing & Mfg Co. Ltd.-2007 (215) ELT 3 (S.C)
- CCE Vs Dynaflex Pvt. Ltd.-2011 (266) ELT 41 (Guj.)
- Garden Silk Mills Ltd v. CCE-2016 (332)ELT 820 (T)
- CCE v. Strategic Engineering (P) Ltd.-2014 (310) ELT 509 (Mad.)
- CCE v. Bill Forge Pvt. Ltd.-2012 (279) ELT 209 (Kar.)
- Amco Batteries Ltd v. CCE-2003 (153) ELT 7 (SC)
- CCE v. Mahindra & Mahindra Ltd.-2005 (179) ELT 21 (SC)
- CCE v. Narmada Chematur Pharmaceuticals Ltd.- 2005 (179) 276 (SC)
- Commissioner v. Shiv Steel Re-Rolling Mills- 2016 (337) ELT A94 (Bom.)
- UOI v. Indian Ispat Works Pvt. Ltd.- 2015 (322) ELT 647 (Chhattisgarh)
- Rashtriya Ispat Nigam Ltd Vs CCE- 2003 (161) ELT 285(T)

- Affirmed by the Hon'ble Supreme Court of India at- 2004 (163) ELT A53 (SC)
- Apex Electricals Pvt. Ltd. v. U.O.I.- 1992 (1) ELT 413 (Guj.)
- Cadila Pharmaceuticals Ltd. vs. CCE- 2017 (349) ELT 694 (Guj.)

3. Shri R.P Parekh, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that admittedly the appellant has sent the inputs chemicals for job work in the water base. The entire processed goods have been returned within 180 days. The remaining quantity was subsequently returned back though after 180 days but the same was in the form of wastage. In fact the job worker is not required to return the wastage material which is predominantly the contaminated water therefore, it cannot be said that the appellant has not received back the processed goods within 180 days. In this fact the appellant has received back the processed goods within 180 days therefore, the demand on the ground that the appellant has not received the goods within 180 days is not sustainable.

4.1 Moreover, even if it is assumed that the subsequently received material after 180 days is part of the processed goods even then only due to delay in receipt Cenvat credit cannot be denied as the appellant was entitled for Cenvat credit as and when the input / processed goods received after 180 days therefore on both the count the cenvat credit could not have been denied or demanded by the Revenue. There is a short receipt of 2% material. I find that since the appellant has sent their chemicals in the water base during the process it is obvious that a certain quantity of the contaminated water shall be wasted therefore, the same is not capable of being returned by the job worker. Irrespective of the fact

whether the same is liable to be returned or not there is no dispute that the non receipt of material is wastage and nothing else. It is settled that any wastage arising during the course of manufacture cenvat credit attributed to said wastage cannot be denied.

4.2 My above finding is supported by the various judgments cited by the appellant (Supra). On limitation I also find that since the appellant has followed the procedure as prescribed in Rule 4(5)(a) for movement of goods for job work. No suppression of fact can be attributed to the appellant. Therefore, the demand is not sustainable on the time limitation also.

5. As per my above discussion and finding the demand raised by the lower authority is not sustainable. Accordingly, I set aside the impugned order and allow the appeal with consequential relief, if any, in accordance with law.

(Pronounced in the Open Court on 18.01.2022)

(RAMESH NAIR)
(MEMBER JUDICIAL)

Geeta