

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12121 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-15-2019-20 Dated-25/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Ami Lifesciences Pvt Ltd

82/B ECP CANAL ROAD AT AND POST KARAKHADI
TALUKA PADRA, VADODARA, GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-I

1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA,GUJARAT-390007

.....Respondent

APPEARANCE:

Shri Dhaval Shah (Advocate) for the Appellant

Shri Ghanshyam Soni, Jt. Commr. (Authorised Representative) for the Respondent

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

Final Order No. A/ 10306 /2022

DATE OF HEARING:05.04.2022

DATE OF DECISION:05.04.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of pharmaceutical goods, some of the products are exempted. Initially they have availed the Cenvat Credit in respect of all the common inputs and input services which have been used in the manufacture of dutiable and exempted goods. The appellant subsequently reversed the cenvat credit attributed to the exempted goods on due date. The case of the department is that since the appellant have not filed a declaration for opting of proportionate reversal of credit, they are required to pay 6% of the value of the exempted goods, accordingly, the differential demand was confirmed. The appellant filed an appeal before the Commissioner (Appeals). The Learned Commissioner (Appeals) has dismissed the appeal of the Revenue on the ground that the appellant have not followed the procedure by filing a declaration for opting of proportionate reversal of credit in terms of Rule 6(3)(A) of Cenvat Credit Rules, 2004. Therefore, the present appeal filed by the appellant.

2. Shri. Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that there is no dispute that the appellant have reversed the

proportionate credit on due date. Therefore, the situation is, as if no credit was availed right from the date of taking credit. He submits that non filing of declaration is only the procedural lapse which does not involve any Revenue implication therefore, such procedural lapse may be condoned. He placed reliance on the following judgments:-

- Tata Chemicals Ltd. Vs CCE 2021 (12) TMI 356
- Biochem Pharmaceuticals Industries 2021 (10) TMI 1285 CESTAT
- P & B Pharmaceuticals Ltd. 2021 (8) TMI 174 – CESTAT
- Bombay Minerals Ltd. 2014 (311) ELT 707 (Tri-Ahd.)
- Mangal textile Pvt. Ltd. 2014 (311) ELT 707 (Tri. Ahd.)
- Maize Products 2009 (234) ELT 431 (Guj.)

3. Shri. Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that for proportionate credit, it is a mandatory requirement that the appellant should opt for the said provision in writing by filing a declaration which they failed to do so, therefore, the option of proportionate credit is not available to the appellant and Learned Commissioner (Appeals) has rightly held that the appellant is liable to pay 6% of the value of the exempted goods. He placed reliance in the case Nicholas Piramal India Ltd.-**2009 (244) ELT 321 (Bom.)** and Ambay Cements reported at-**2004 (178) ELT 25 (S.C.)**

4. I have carefully considered the submission made by both the sides and perused the records. I find that the Learned Commissioner (Appeals) held that the appellant is required to pay 5%/10% on the ground that they have not filed a declaration as required for payment of proportionate credit in terms of Rule 6(3)(A) of Cenvat Credit Rules, 2004. I find that it is not in dispute that the appellant have admittedly reversed the proportionate credit. Therefore, in my view as held by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. 1996 (81) ELT 3 (SC), reversal of Cenvat Credit shall amount to non-availment of Cenvat Credit, if this be so, then Rule 6 is not applicable. Alternatively, once, the appellant have reversed the Cenvat Credit proportionately, they have opted for the reversal of proportionate credit then the Revenue cannot insist for some other option which the appellant has not opted for. As regard, non-filing of the declaration, which is only the procedural requirement. Due to lapse of procedural requirement, substantial benefit of proportionate reversal of Cenvat credit cannot be objected to. Even if I see the declaration, the information asked for in the declaration are as under:-

- (i) Name, address and registration No. of the manufacturer of goods provider of output service;

- (ii) Date from which the option under this clause is exercised or proposed to be exercised;
- (iii) Description of dutiable goods or taxable services;
- (iv) Description of exempted goods or exempted services;
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

5. From the details asked for in the declaration, I find that the same is otherwise available with the department, therefore, even if the details were not declared in the prescribed form but the details are otherwise required to be declared in the form are otherwise available with the department, therefore, mere non filing of declaration cannot be the reason that the appellant's option for the proportionate reversal is not available. The judgement cited by the appellants are directly applicable to the facts of the present case. Accordingly, I am of the view that the appellant has rightly reversed the proportionate credit. Hence, no further payment can be demanded from the appellant. With this observation, the impugned order is set aside, appeal is allowed

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)