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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court – I

**Excise Appeal No. 30244 of 2018**

(Arising out of OIA No.HYD-EXCUS-SC-AP2-0157-17-18 dt.27.12.2017 passed by  
Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

**Suryaunday Spinning Mills Ltd**

Sy No.311/A, Lingojigudem, Choutuppal,  
Nalgonda Dist., Telangana – 508 252

**.....Appellant**

*VERSUS*

**Commissioner of Central Tax  
Secunderabad - GST**

LB Stadium Road, Basheerbagh,  
Hyderabad, Telangana – 500 004

**.....Respondent**

**Appearance**

Shri Narender Dave, Advocate for the Appellant.

Shri B. Sangameshwar Rao, AR for the Respondent.

**Coram:**

**HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)**

**HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/30310/2023**

**Date of Hearing: 06.10.2023**

**Date of Decision: 06.10.2023**

**[Order per: ANIL CHOUDHARY]**

The issue involved in this Appeal is whether the Appellant is required to reverse Cenvat credit on their exempt turnover under clause (i) or (ii) of sub-Rule (3) of Rule 6.

2. The Appellant is engaged in the business of manufacturing polyester spun yarn ('PSY') falling under Chapter 55 of the Central Excise Tariff Act, 1985, using the duty paid Polyester staple fiber ('PSF') procured by them.

3. The Appellant is entitled to benefit under Notification No.30/2004-CE dated 09.07.2004 ('N.N. 30/2004'), wherein, the goods manufactured by the Appellant are wholly exempt from excise duty leviable thereon with the condition of non-availment of Cenvat Credit. Therefore, the Appellant is manufacturing and clearing PSY without payment of duty under Notification No. 30/2004 and on payment of duty after availing cenvat credit on the inputs.

4. The Appellant only avails Cenvat credit proportionately on inputs used in manufacture of dutiable goods and proportionately reverses the credit pertaining to exempt goods, on the basis of input-output ratio, after considering

the wastage. The fact of availment of exemption under Notification No. 30/2004 is evident from the ER-1 Returns filed for the relevant period.

5. The table below would summarize the event along with the dates:

<b>DATE</b>	<b>DESCRIPTION</b>
June 2015	Audit in the Appellant's premises regarding the availment of credit based on consumption of raw material used in dutiable goods and exempt goods.
08.07.2015	Audit objections in respect of the audit conducted
05.08.2015	Appellant's Reply to Audit Objections
05.08.2015	The Appellant paid Rs.20,00,000/- during Audit
21.10.2015	The Appellant paid Rs.1,08,95,173/- during Audit
21.10.2015	Appellant submitted letter to the Department intimating them the amount of Cenvat credit liable to be reversed after reconciliation of records after Audit.
11.01.2016	Department letter addressed to Appellant requiring them to reverse an amount of Rs.1,62,60,808/-.
01.03.2016	Appellant submitted letter to the Department stating that the amount of Rs. 1,28,95,173/- is 'paid under protest' as the Appellant is not required to reverse credit on exempt goods and can opt for payment of 5%/6% on value of exempt goods, along with detailed statement.
16.03.2016	Final Audit Report for the period October 2011 to March 2015
16.09.2016	SCN issued to the Appellant proposing demand of Rs.1,62,60,808/- with the allegation that the Appellant has wrongly availed Cenvat credit on raw material used for manufacture of exempt goods along with interest and penalty. Further, an amount of Rs.4,36,809/-alleging that transportation charges are liable to be included in the assessable value for payment of excise duty since place of delivery is buyer's premises
	Reply submitted by Appellant in respect of the above SCN
30.12.2016	OIO No. 52/2016-17-CE-Hyd-III-Adjn(ADC) passed by the Adjudicating Authority confirming the entire demand proposed in the SCN
27.12.2017	OIA No. HYD-EXCUS-SC-AP2-0157-17-18 passed by the commissioner Appeals, upholding the OIO and partly allowing the appeal by setting aside demand of

	Rs.4,36,809/-.
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6. The Case of the department is as follows:

- (a)The Appellant has irregularly availed cenvat credit on inputs used in manufacture of exempt goods on account of wrong maintenance of records.
- (b)The Appellant should have paid 6% on the value of exempted goods cleared and reflected the same in their returns. However, they maintained separate records and had not availed credit on the inputs used for manufacture of exempt goods, which resulted in excess credit being availed.
- (c)The Appellant accepted that the records were maintained incorrectly, and the ratios of inputs were skewed and agreed for reversal of credit. Accordingly, there is no infirmity in the allegation of suppression.
- (d)Maintenance of separate records by the appellant indicates their intention to avail the option of maintaining separate accounts and not reversal of 6% under Rule 6 of CCR, which is not acceptable in terms of the restriction of Rule in Explanation (I) to Rule 6(3) of CCR.
- (e)Extended period of limitation is invocable for subsequent period, since the appellant committed a different kind of error than the previous period.

7. Heard the parties.

8. Upon hearing the parties, we find that it is the allegation of the Revenue in the SCN, that Appellants have not maintained proper records of input credit and its utilization, so far, they are clearing both taxable and exempted finished goods. It is the case of the Revenue, that in such case, as there is some discrepancy in the utilization as per input-output ratio, accordingly, Appellant is required to pay the deficit amount of Cenvat credit, under Rule 6(2) read with Rule 6(3)(ii) of CCR.

9. We find that Rule 6(3) categorically starts with the words - Notwithstanding anything contained in sub-rule (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow **any one** of the following options, which, inter alia, include option to pay an amount equal to the specified percentage of value of exempted goods or exempted services, along with other option of reversing the proportionate amount under sub-rule (2) or maintain separate accounts for the

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receipt consumption in the inventory of inputs, as provided in clause (a) of sub-rule (2) and take credit only on inputs under sub-clause (ii) and (iv) of the said clause (a), and pay an amount as determined under sub-rule (3A) in respect of the input services.

10. Thus, we find that once it is the case that proper records have not been maintained with regard to receipt of inputs and its utilization, sub-rule (3) gives option to the Assessee, and thus, Revenue cannot enforce any of the option(s) under sub-rule (3). Thus, we hold that Appellant is entitled to reverse the amount of credit as per option in clause (i) of sub-rule (3) of Rule 6 i.e., pay an amount equal to the specified percentage (5% or 6%) of the value of exempted goods, in the facts of the present case.

11. In view of our findings, we allow the Appeal and set aside the Impugned Order. Appellant shall be entitled to consequential benefits, in accordance with law. As the Appellants have admittedly paid the amount of Rs.1,28,95,173/- during audit/ investigation under protest, they shall be entitled to refund of the same with interest as per Rules.

(Dictated and pronounced in the Open Court)

**(ANIL CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**