

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10342 of 2016 - DB

(Arising out of OIO-SIL-EXCUS-000-COM-004-15-16 dated 23/11/2015 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Suraj Industries

.....Appellant

Survey No. 118/102,
Village : Dadra, Near Dadra Check Post,
Silvassa, U T Of Dadra And Nagar Haveli

VERSUS

C.C.E & S.T.-Silvasa

.....Respondent

Commissioner Central Excise,
Customs & Service Tax, Silvassa, 4th floor,
Adarsh Dham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
VAPI, Gujarat

APPEARANCE:

Shri Sachin Chitnis & Shri Kiran Chavan, Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 12366/2023

DATE OF HEARING: 10.10.2023
DATE OF DECISION: 27.10.2023

RAMESH NAIR

The issue involved in the present case is that on availment of Notification No. 30/2004-CE dated 09.07.2004 after reversal of Cenvat Credit on input, input in process and input contained in final product, whether the balance Cenvat Credit shall lapse in terms of Rule 11(3) of Cenvat Credit Rules, 2004 or otherwise.

2. Shri Sachin Chitnis, Learned Counsel along with Shri Kiran Chavan appearing on behalf of the appellant submits that as per the strict interpretation of Rule 11(3) of Cenvat Credit Rules, 2004 after reversal of credit as required under Rule 11(3)(i) the balance credit shall lapse only in a case where the assessee avails an exemption which is absolutely in nature under Section 5A. In the present case the Notification No. 30/2004-

CE is not absolute exemption but bearing a condition. Therefore, the Rule 11(3)(ii) shall not apply in the present case. Accordingly, the balance Cenvat Credit on availment of Notification No. 30/2004-CE shall not lapse.

In support he placed reliance on the following judgments:

- Patodia Filaments Pvt. Ltd.-2019-TIOL-1696-CESTAT-AHM
- -do- upheld by Mumbai High Court - 2020-TIOL-577-HC-MUM-CX
- Kanchan India Ltd. - CESTAT New Delhi Order No.53365/2018 dated 1.11.2018
- -do- Upheld by Rajasthan High Court in Central Excise Appeal No.15/2019 dated 3.7.2019
- Wearit Global Ltd. - CESTAT New Delhi Order No.52773/2018 dated 2.8.2018
- -do-upheld by Rajasthan High Court in Central Excise Appeal No.11/2019 dated 12.7.2019
- Sitaram India Limited - CESTAT New Delhi order Nos.52960-52961/2018 dated 13.9.2018
- Mahabir Jute Mills Ltd.-2018-TIOL-3487-CESTAT-All
- Jansons Textile Processors - 2018-TIOL-3731-CESTAT-Mad
- Orient Syntex - 2020-TIOL-800-CESTAT-Del
- Yashasvi Yarns Ltd. -2020-TIOL-1406-CESTAT-Ahm
- Synfab Sales and Industries Ltd. - 2022-TIOL-59-CESTAT-Ahm

3. Shri Rajesh Nathan, Learned Assistant Commissioner AR appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the revenue's contention is that on availment of exemption notification No. 30/2004-CE dated 09.07.2004 after reversal of Cenvat Credit on input, input in process and input contained in

the final product, whatever balance credit is left out the same shall lapse in terms of Rule 11(3) of Cenvat Credit Rules, 2004. For ease of reference the said of rule is reproduced below:

“RULE 11. Transitional provision. — (1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.]”

From the plain reading of the above Rule, it can be seen that as per 11(3)(i) if an assessee opt for exemption from whole of the duty under a notification issued under Section 5A, the assessee is required to pay an amount equalent to Cenvat Credit in respect of input lying in stock, input in process and input contained in the final product lying in stock. As per this rule irrespective of whether the notification is absolute or otherwise the assessee is required to reverse the credit in respect of input, input in process or input contained in final product lying in stock as on date of opting the exemption notification. Now as per clause (ii) of sub rule (3) of Rule 11 if an assessee avails the exemption which is an absolute exemption under section 5A than in addition to reversal of the credit as provided under clause (i) of rule 11(3) the remaining balance of credit after reversal shall lapse. Therefore, it is clear that the reversal of credit on the stock of input, input in process and input contained in final product is required to be reversed by an assessee who avails any exemption. However, the provision for lapsing of credit on remaining balance shall apply only in case where the exemption notification is absolute.

4.1 In the present case the notification No. 30/2004-CE contains a condition namely "provided that nothing contain in this notification shall apply to the goods in respect of which credit of duty on input has been taken under the provision of Cenvat Credit Rule, 2002". Since the notification contained the said condition the notification No. 30/2004-CE is not an absolute exemption. Consequently, the provision of lapsing of the remaining credit in terms of Rule 11(3) (ii) shall not apply in the fact of the present case. This issue has been considered time and again in various judgments as cited by the appellant. Therefore, the issue is no longer res-integra.

5. Accordingly the impugned order is not sustainable. Hence, the same is set aside appeal is allowed.

(Pronounced in the open court on 27.10.2023)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**

Raksha