



सत्यमेव जयते

आयुक्त का कार्यालय ,
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद अपील आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi,
Ahmedabad 380015



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DEM - 20201064SW000061A58P/

क फाइल संख्या : File No : V2(CEX)/107/North/Appeal/2020-21 / 15832 TO 15838

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-25 to 26/2020-21

दिनांक Date : 21.09.2020 जारी करने की तारीख Date of Issue: 09/10/2020

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग Arising out of Order-in-Original: 08/ADC/2019-20 MLM Date: 14.11.2019 Issued by:
Additional Commissioner, Central GST & C.Ex. Ahmedabad, North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

Appellant- Astra Life Care(India) Pvt. Ltd, and Shri Mahendrasingh F. Rana, Director
of M/s Astra Life Care(India) Pvt. Ltd..

Respondent- Additional Commissioner, Central GST and Central Excise, Ahmedabad
North.).

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

\भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

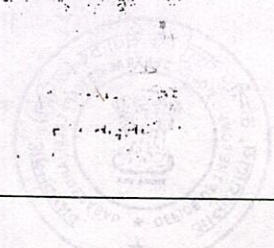
उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। दो फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।



In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

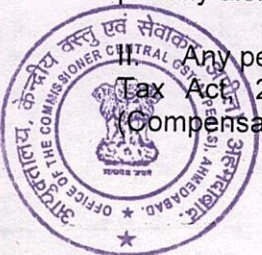
- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

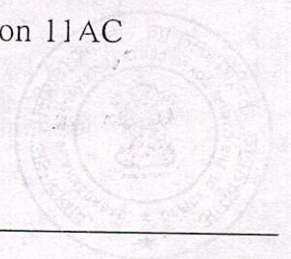


ORDER IN APPEAL

The present appeals have been filed by (i) M/s. Astra Life Care (India) Pvt. Ltd., (100%EOU) [hereinafter referred to as the 'appellant'], situated at Plot No.57/P, Sarkhej Bavla Highway, Taluka: Bavla, Ahmedabad and (ii) Shri Mahendrasinh F. Rana, Director of M/s. Astra Life Care (India) Pvt. Ltd. [hereinafter referred to as the 'appellant-2'], against OIO No. 08/ADC/2019-20/MLM dated 14.11.2019 (hereinafter referred as "impugned order") passed by the Additional Commissioner, Central GST and Central Excise, Ahmedabad North (hereinafter referred to as the "adjudicating authority").

2. The facts of the matter, in brief, are that the appellant is engaged in the manufacture and clearance of Pharmaceutical Products falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985, and having Central Excise Registration No. AAECA6553DXM001. The appellant was also engaged in the trading of Pharmaceutical products which is an "exempted service" as per Rule 2(e) of Cenvat Credit Rules, 2004. Acting on intelligence, the Preventive Wing of the Department had searched the premises of the appellant and found that they were not maintaining separate accounts for receipt of the common input services used for manufacturing dutiable goods as well as for provision of the exempted service i.e. trading of goods, as required under Rule 6(2) of Cenvat Credit Rules, 2004 and thereby failed to reverse the Cenvat credit in terms of Rule 6(3) of CCR, 2004. The appellant had also failed to reverse Cenvat credit of duty paid on inputs, which had later expired and were not used in the manufacturing process. Accordingly, a show cause notice was issued to them for recovery of Cenvat Credit amounting to Rs. 1,16,67,599/- which was required to be reversed under Rule 6(3)(i) and Rs. 52,301/- along with Interest under Rule 14 of CCR, 2004 read with section 11A of Central Excise Act, 1944 besides proposing imposition of penalty under Rule 15 of CCR,2004 read with Section 11AC of Central Excise Act,1944. In the said show cause notice personal penalty under Rule 26 of Central Excise Rules, 2002 was also proposed on the Director of the appellant firm Shri Mahendrasinh Fuluba Rana.

2.1. The said show cause notice was first adjudicated by the Adjudicating authority vide Order-in-Original No. 08/ADC/2017/RMG dated 13.11.2017 by confirming Rs. 1,16,67,599/- as demanded and as the appellant had reversed the said amount and hence appropriating the same. In the said order another amount of Rs. 47,740/- was also confirmed and ordered recovery of Interest on both the amount and also imposed penalty of Rs. 41,76,237/-+ Rs. 33,62,866/- under Rule 15 of CCR,2004 readwith Section 11AC



of the Central Excise Act, 1944 on the appellant as well as a personal penalty of Rs. 50,000/- on Shri Mahendrasinh Fuluba Rana, Director of the appellant company.

2.2. Being aggrieved by the impugned order dated 13.11.2017, the appellant and its Director Shri Mahendrasinh Fuluba Rana filed separate appeal before the Commissioner (Appeal), Ahmedabad who vide Order In Appeal No. AHM-EXCUS-002-APP-341-342-17-18 dated 27.02.2018/ 24.03.2018 remanded the matter back to the adjudicating authority to decide the case afresh. The relevant portion of para 6 of the Order In appeal are as under:

- (i) *"the appellant was only trading in finished goods and not in any common inputs, as such the appellant was maintaining accounts of the inputs used in the manufacturing of dutiable goods as there was no inputs involved in the trading of finished goods; that they were fulfilling the criteria of maintaining separate accounts for inputs used in dutiable goods and separate accounts used for exempted service. This facts has been overlooked in the impugned order. The appellant's reply dated 3-04-2017 to the show cause notice explicitly informs at para 8.1 that they Maintain accounts for inputs used for manufacturing and separate account for inputs used for trading. This facts has not been put forth by the adjudicating Authority while concluding that the appellant had to pay an amount equal to 6%/7% of the value of exempted services as per option 6(3)(i) of the Cenvat Credit Rules, 2004.*
- (ii) *The decision of the Hon'ble Tribunal passed in the case of Mercedes Benz (India) Pvt. Ltd [cited at 2015(40) STR0381 (Tri-Mum)] , and relied upon by the appellant, also appears to have been distinguished overlooking the similarity of the facts of this case. At para 5.4 of the said order the Hon'ble Tribunal States that*

"The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of exempted goods for exempted services. If this is the objective than at the most amount which is to be recovered shall not be in any case more than Cenvat credit attributed to the input or input services used in the exempted goods"

2.3. The Adjudicating authority had during denovo proceeding come to a conclusion that the officers of the preventive wing ascertained that the appellant were not maintaining separate accounts in terms of Rule 6(2) of the Cenvat Credit Rules, 2004 and the said facts has been admitted by the Director of the company in his statement dated 20.07.2016 and subsequently the appellant admitted the liability and reversed Rs.1,16,67,599/- and Rs. 52,301/- vide Entry No. 464 and 465 dated 20.07.2016 voluntarily; that the contention of the appellant that they maintain separate accounts for taxable and exempted goods/services separately is clearly a well devised plan, as an afterthought; that the director has not retracted his statement and during personal hearing held on 10.10.2019, no additional documents to substantiate their contention has been produced and hence unable to consider the case laws in the case of Mercedes Benz (I) Pvt. Ltd (2015 (40)STR 0381 (Tri-Mum) on the basis of which the Hon'ble Commissioner (Appeals) remanded the case. Accordingly, the adjudicating authority vide



impugned order again confirmed the demand along-with penalty on the appellant. The Adjudicating Authority also imposed personal penalty on Shri Mahendrasinh Fuluba Rana, the Director of the appellant firm.

3. Being aggrieved with the impugned order, the appellant and the Director have filed separate appeals on the grounds that:

- Impugned order dated 14-11-2019 passed in gross violation of direction given by the Hon'ble Commissioner (Appeals) while remanding back the earlier order dated 13-11-2017:
- Reliance on the statement of Director without verifying veracity of the statement is not legal and correct.
- Relevancy of the statement under Section 9(D) of the Central Excise Act, 1944 is to be corroborated with material evidence.
- Wrong Application of option under Rule 6(3)(i) instead of under Rule 6(3)(iii) and resultant excessive demand of amount which is not legally correct as per settled law.
- There was no intention to evade duty in non-filing of option under Rule (3A)ibid
- Findings with regard to Non-production of additional documents to substantiate the claim of appellant.
- Wrong demand on expiry goods received back for destruction on account of the medicine which has attained expiry date.
- Excess amount paid got paid by the department in terms of Rule 6(3) of Cenvat Credit Rules, 2004 is required to be given as re-credit.

4. Personal hearing in the matter was held on 31.08.2020. Shri V.N.Thakkar, Authorized representative, and Shri Bhavesh Jhalawadia, Chartered Accountant, appeared for the hearing. They reiterated the submission made in appeal memorandum. They further submitted additional submissions dated 31.08.2020 along with case laws in their favour.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as additional submission made at the time of personal hearing. It is observed that the issue involves reversal of CENVAT Credit under Rule 6(3) of the CCR, 2004 for failure to maintain separate accounts for receipt of common input services used for manufacturing of dutiable goods as well as for provision of exempted service i.e trading of goods. The matter was remanded back to the adjudicating authority to give a finding on the contention of the appellant in reply to SCN that they were fulfilling the criteria of maintaining separate accounts for inputs used for dutiable goods and separate accounts for inputs used for exempted services. Further, it was also directed to examine the applicability of case law of Mercedes Benz (India) Pvt. Ltd., 2015(40)STR0381 (Tri-Mum) in this case.



6. I find that the adjudicating authority has not examined any documents during de-novo proceeding and has simply quoted the findings of preventive team and statement of the Director of the company. He has also not examined the applicability of Mercedes Benz (India) Pvt. Ltd case by stating that no additional documents were produced before him to substantiate their contention. I find that the contention of appellant are both factual as well as relevant to the case at hand. Hence, the conduct of adjudicating authority in de-novo adjudication is in contravention of the directions of the Commissioner (Appeals) contained in order dated 27.02.2018/24.03.2018.

7. It is observed from the case records that the appellant is a 100% EOU, who was manufacturing and clearing P.P.Medicaments. It was observed by the Preventive team of the department that they were also engaged in trading of pharmaceutical products since F.Y. 2012-13 from their factory premises itself. They were storing and clearing the manufactured as well as traded pharmaceutical products from their factory premises. It is the contention of the department that they were ineligible to avail and utilize cenvat credit of service tax paid on input service on clearance of traded goods, which has come under category of exempted service since Union Budget 2011-12. They were also not maintaining separate account for receipt and utilization of CENVAT on common input services for manufactured goods as well for traded goods cleared by them. It was accordingly contended that they were required to reverse the inelligible CENVAT under Rule 6(3)(i) of the Cenvat Credit Rules, 2004. Apart from that, it was also alleged that the appellant had wrongly availed CENVAT credit of duty paid on inputs which were lateron expired and not used in or in relation to manufacture of finished goods.

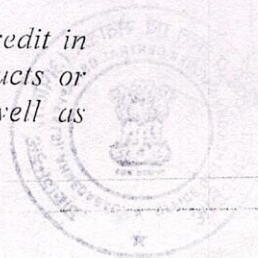
8. The relevant Rule 6(1), (2) and (3) of the Cenvat Credit Rules, 2004 applicable during the period is reproduced below:

RULE 6. Obligation of a manufacturer or producer of final products and a provider of output service.

- (1) *The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2) :*

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in Rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

- (2) *Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as*



exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -

- (a) the receipt, consumption and inventory of inputs used -
- (i) in or in relation to the manufacture of exempted goods;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
 - (iii) for the provision of exempted services;
 - (iv) for the provision of output services excluding exempted services; and
- (b) the receipt and use of input services -
- (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
 - (ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance up to the place of removal;
 - (iii) for the provision of exempted services; and
 - (iv) for the provision of output services excluding exempted services,
- and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

(3) Notwithstanding anything contained in sub-rules (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, as applicable to him, namely :-

(i) pay an amount equal to five percent of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be five percent of the value so exempted :

Explanation I. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II. - For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.



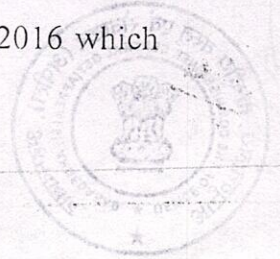
9. It is observed from the legal provisions above that under Rule 6(3) of CCR, the appellant had following options:

- i) Pay an amount equal to five percent of value of the exempted goods and exempted services; or
- ii) pay an amount determined under Sub-rule 3A.

Further on critical examination of option (ii) and (iii) of Rule 6(3), it is observed that in both the cases the amount has to be determined as per Rule 6(3A), however in option (iii) differentiation is made with regard to applicability of Rule 6(3A) to the extent that the provision of sub-clauses (i) and (ii) of clause (b) and sub clauses (i) and (ii) of clause (c) of said sub-rule (3A) shall not apply for such payment. It is the contention of the appellant that since they maintained separate account for taxable goods cleared and exempted service provided, they were eligible for option under Rule 6(3)(iii) of the CCR. However, I find that adjudicating authority has not addressed this issue and has *suo-moto* applied the option 6(3)(i). Further, it is admitted facts on record that appellant was not maintaining separate records for Input services, which is recorded in the Panchnama itself. Under the circumstances, I find that the contention of the appellant need factual verification that they have maintained records of Inputs separately as prescribed under Rule 6(2)(a) and not maintained separate records for Input service as prescribed under Rule 6(2)(b) and whether they are entitled to avail option 6(3)(iii) of the CCR.

10. The appellant was consistently contending this fact and also referring to the case of Mercedes Benz (India) Pvt. Ltd [cited at 2015(40)STR 0381 (Tri-Mum)] to which the adjudicating authority has not agreed for reason recorded in para 22 and 23 of the impugned order. However it is observed that the adjudicating authority has not given any answer with respect to the observation of Commissioner (Appeals) who while remanding the case to him referred the decision of Mercedes Benz (India) Pvt. Ltd [2015(40)STR0381 (Tri-Mum)] relied by the appellant and observed that it also appears to have been distinguished overlooking the similarity of the facts of this case and referred para 5.4 of the said order of the Hon'ble Tribunal. Thus, the Commissioner (Appeals) had specifically directed to examine the case in the light of Mercedes Benz (India) Pvt. Ltd case [2015(40) STR0381 (Tri-Mum)], however I observe that the adjudicating authority has failed to do so.

11. It is further observed that while clarifying the objectives of Rule 6, the Joint Secretary (TRU), CBEC has issued a letter no. 334/8/2016-TRU dated 29.2.2016 which states that:



- a. Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.
- b. sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.
- c. sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.
- d. sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).
- e. The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

12. I find that, this amendment reflects the interpretation and intent of the Government and it has been clearly mentioned in the said letter that the rules are being redrafted with the objective of simplifying and rationalizing the CCR without altering the established principles of reversal of such credit. Even otherwise, to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal. Though the above referred amendment has been made as a clarification nature and not specified any retrospective effect, the intent of the Government is very clear.

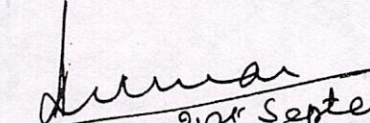
13. It is further observed that the appellant have re-quantified demand keeping in view the decision of Mercedes Benz (India) Pvt. Ltd [cited at 2015(40)STR 0381(Tri-Mum), by applying Option under Rule 6(3)(iii) at the appeal stage and were not submitted before the adjudicating authority. The matter of applicability of option under Rule 6(3)(i) or Rule 6(3)(iii) of the CCR, 2004 to the case was the subject matter of remand proceeding. This requires verification by the adjudicating authority for which I have no option but to remand the case to him to decide afresh.




14. As regards to demand of goods received for destruction, the appellant contended that they have not availed the cenvat credit on the goods received back after expiry date and had also not claimed any remission of duty which also required verification for the cenvat credit account. Hence, the contention made by the appellant requires verification of documents as to whether the claim made by them is correct or not. Hence, I have no option but to remand the case to the adjudicating authority to decide afresh.

15. I find that the adjudicating authority has imposed penalty under Rule 26 of the Central Excise Rules, 2002 on appellant-2. Since, the matter is being remanded back, the contentions of the appellant should also be looked into in the de-novo adjudication proceeding.

16. In view of above discussion, I remand the case back to the adjudicating authority to decide the case as per the direction contained here-in-above. The Appeals filed by both the appellants stand disposed off in above terms.


(Akhilesh Kumar) 21st September, 2020.
Commissioner (Appeals)
Ahmedabad
Dated : .09.2020

Attested


(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

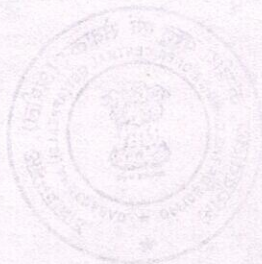
To

1. M/s Astra Life Casre (India) Pvt. Ltd.,(100% EOU),
Plot No.57/P,
Sarkhej Bavla Highway,
Taluka Bavla, Ahmedabad.
2. Shri Mahendrasinh F. Rana,
Director of M/s Astra Life Casre (India) Pvt. Ltd.,(100% EOU),
Plot No.57/P, Sarkhej Bavla Highway,
Taluka Bavla, Ahmedabad.

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Additional Commissioner, CGST Ahmedabad North.
4. The Deputy/Assistant Commissioner, CGST, Division -V, Ahmedabad North.
5. The Assistant Commissioner, System-CGST Ahmedabad North.
6. Guard File.
7. P.A. File.





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