

**2020-TIOL-1706-CESTAT-KOL**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH, KOLKATA  
COURT NO. II**

**Excise Appeal No.76377 of 2019**

Arising out of Order-in-Appeal No.710/HWH/CE/2018-19, Dated: 05.03.2019

Passed by Commr. (Appeals) of CGST & Excise, Kolkata

**Date of Hearing: 18.11.2020**

**Date of Decision: 09.12.2020**

**M/s ANMOL STAINLESS PVT LTD  
CRESCENT TOWER, 229, AJC BOSE ROAD  
2ND FLOOR, KOLKATA-700020**

**Vs**

**COMMISSIONER OF CGST AND EXCISE  
HOWRAH, 15/1, STRAND ROAD, KOLKATA-700001**

**Appellant Rep by:** Shri Ankit Kanodia, CA

**Respondent Rep by:** Shri S S Chattopadhyay, AR

**CORAM:** P K Choudhary, Member (J)

**CX** - Issue is with respect to whether the assessee is liable to reverse the amount demanded under Rule 6(3) of CCR, 2004 on certain activities carried out by it on imported China pipes and cleared after making payment of excise duty by treating the said process as not amounting to manufacture and thus treating the same as trading of goods - The issue is no longer res integra after the judgment of Tribunal in case of *Suyash Auto Press Componenets and Assemblies Pvt Ltd* [2018-TIOL-1424-CESTAT-MUM](#) - There is no dispute that the goods were cleared after payment of excise duty and thus once the duty has been paid on such goods and accepted by the department, the same cannot be treated as a trading activity to trigger the mischief under Rule 6(3) of CCR, 2004 - Further, it is also on record that assessee's activities were known to the department since inception as earlier also a SCN was served on assessee for recovery of Cenvat credit availed on imported china pipes which were cleared after payment of duty - Thus, the current proceedings are on the same foot - By treating the activities of assessee as trading of goods cannot be sustained by invoking extended period of limitation as the department was very well in knowledge of the entire

proceedings since inception - Thus, the demand cannot sustain on limitation ground as well: CESTAT

**Appeal allowed**

**Case laws cited:**

***SUYASH AUTO PRESS COMPONENTS AND ASSEMBLIES PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE PUNE-III - [2018-TIOL-1424-CESTAT-MUM... Para 5](#)***

***EXIDE INDUSTRIES LTD. Versus COMMISSIONER OF C. EX. & S.T., RAIGAD - [2018-TIOL-1541-CESTAT-MUM... Para 5](#)***

***BERICAP INDIA PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I 2018+ (363) E.L.T. 1078 (Tri. - Mumbai)... Para 5***

**FINAL ORDER NO.75654/2020**

**Per: P K Choudhary:**

1. The appellant assessee is in appeal against the Order-in-Appeal dated 05/03/2019 for confirmation of demand of Rs.3,61,355/- as irregular Cenvat credit UNDER Rule 6(3) of the Cenvat credit Rules, 2004 along with applicable interest and equivalent penalty.
2. Briefly stated, the facts of the case are that the appellant, M/s Anmol Stainless Private Limited, is engaged in the business of manufacture of cold rolling of thick stainless sheets, slitting in small sizes, making stainless pipes etc. classifiable under Chapter No.73049000 of the First Schedule of the Central Excise Tariff Act, 1985.
3. Based on an EA 2000 audit of the excise and service tax records of the Appellant for the period from 2012-13 to 2014-15, a Show cause notice dated 13/01/2017 was issued alleging irregular availment of Cenvat credit to the tune of Rs.3,61,355/- along with interest and penalty alleging that the Appellant had engaged itself in trading activities as well as manufacture and sale of excisable goods and have not maintained separate set of books of accounts for common input services used in trading of goods and manufacture of taxable goods and thus reversal of common credit is required under Rule 6 of the Cenvat Credit Rules, 2004 as trading of goods is an exempted services as per section 66D of the Finance Act, 1994. The said SCN culminated into Order-in-Original dated 12/10/2018 wherein the Adjudicating authority confirmed the total demand as proposed and imposed a penalty of equivalent amount. On Appeal before the Commissioner(Appeals), the Ld. Commissioner (Appeals) upheld the same. Hence, the present appeal before the Tribunal.
4. Shri Ankit Kanodia, CA, appeared on behalf of the appellant and Shri S.S.Chattopadhyay, Ld. A.R. appeared on behalf of the respondent department.
5. The Ld. CA appearing for the appellant submitted that the current SCN is an afterthought of the revenue department as earlier vide SCN dated 01/04/2015, the department had already recovered the amount of Cenvat credit availed by the Appellant on imported China origin pipes on which the Appellant had paid excise duty and removed the same after carrying out certain process of cutting, slitting and polishing. The Appellant states that when the earlier

SCN was issued to the Appellant, it was never stated that the Appellant's activities would tantamount to trading of goods under the legal provisions as the Appellant had already paid excise duty during the removal of the goods after carrying out the processes as above. Hence, the current SCN demanding reversal under Rule 6 of the CCR, 2004 by treating the process as trading of goods cannot be sustained as the goods had suffered excise duty at the time of removal. He relied on the below judgments to support his case:

*a. SUYASH AUTO PRESS COMPONENTS AND ASSEMBLIES PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE PUNE-III - [2018-TIOL-1424-CESTAT-MUM](#)*

*b. EXIDE INDUSTRIES LTD. Versus COMMISSIONER OF C. EX. & S.T., RAIGAD 2018 (362) E.L.T. 898 (Tri. - Mumbai) = [2018-TIOL-1541-CESTAT-MUM](#)*

*c. BERICAP INDIA PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I 2018 (363) E.L.T. 1078 (Tri. - Mumbai)*

6. He further stated that the current proceedings has been initiated by invoking extended period of limitation whereas the knowledge of the activities of the Appellant was well known to the department as it had already issued a SCN for recovery of Cenvat credit on imported China pipes in 2015 itself and hence the extended period cannot be invoked in the current case at all.

7. The learned Authorized Representative for the Revenue, justified the impugned orders.

8. Heard both sides through video conferencing and perused the appeal records.

9. The short issue that arise for consideration in the instant appeal is with respect to whether the Appellant is liable to reverse the amount demanded under Rule 6(3) of the CCR, 2004 on certain activities carried out by it on imported China pipes and cleared after making payment of excise duty by treating the said process as not amounting to manufacture and thus treating the same as trading of goods. I find that the issue is no longer res integra after the judgment of the Tribunal in the case of SUYASH AUTO PRESS COMPONENTS AND ASSEMBLIES PVT LTD supra

*"4. I have carefully considered the submissions made by both the sides and perused the records. The Revenue has demanded the amount under Rule 6 equal to 5% / 6% of the value of the traded goods i.e. steel sheets sold to their vendor. There is no dispute that the said removal is governed by Rule 3(5) of the Cenvat Credit Rules, 2004. It is admitted fact that the appellant has cleared the said steel sheets on payment of duty. The department is considering the said clearances as exempted service being a trading activity. I find that though this removal of steel sheets is indeed a trading activity, but the said clearances were made on payment of excise duty. Therefore, it cannot be considered as an exempted service. Rule 6 applies on the trading activity only in a case when the goods are purchased and sold without taking credit and without payment of duty. Then only such trading will be considered as exempted service. In the present case, the removal of input under Rule 3(5) was made admittedly on payment of duty. Therefore, there is no case of trading activity which is an exempted service. Accordingly, there is no application of Rule 6(3) of the Cenvat Credit Rules, 2004. Accordingly, the impugned order is set aside. The appeal is allowed."*

10. In the instant case of the Appellant also, there is no dispute that the goods were cleared after payment of excise duty and thus once the duty has been paid on such goods and accepted by the department, the same cannot be treated as a trading activity to trigger the mis chive under Rule 6(3) of the CCR, 2004 and I hold accordingly.

11. Further, it is also on record that the Appellant's activities were known to the department since inception as earlier also a SCN dated 01/04/2015 was served on the Appellants for recovery of Cenvat credit availed on imported china pipes which were cleared after payment of duty. Thus, the current proceedings are on the same foot. By treating the activities of the Appellant as trading of goods cannot be sustained by invoking extended period of limitation as the department was very well in knowledge of the entire proceedings since inception. Thus, the demand cannot sustain on limitation ground as well.

12. The appeal is thus disposed of in the above terms with consequential benefits, if any.

(Pronounced in the open court on 09.12.2020)

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