

2021-TIOL-842-CESTAT-KOL

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
EAST REGIONAL BENCH, KOLKATA**

**Excise Appeal No. 77225 of 2019**

[Arising out of Order-in-Original No. 04/Commr/CGST &CE/HWH/Adjn./2019-20, Dated: 26.07.2019  
Passed by Commissioner of CGST & Excise, Howrah]

**Date of Hearing: 15.11.2021**

**Date of Decision: 21.12.2021**

**M/s ANMOL INDUSTRIES LTD  
MAITYPARA, DELHI ROAD, MRIGALA, BARTAL, DANKUNI,  
HOOGHLY-711224**

**Vs**

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

**Appellant Rep by:** Shri Ankit Kanodia, Adv.

**Respondent Rep by:** Shri A Roy, AR

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

**CX**

- The only dispute is regarding compliance of provisions of Rule 6(3) of Cenvat Credit Rules, 2004 by appellant for the period 2012-13 to 2016-17 - Range Superintendent had provided a detailed report as to the compliance of Rule 6 of Cenvat Credit Rules, 2004 by appellant for the period covered in SCN and it has been held that the appellant was in compliance with procedures laid down and there has been excess reversal in years 2014-15 to 2016-17 by appellant - Appellant has complied with all the provisions of Rule 6 of Cenvat Credit Rules, 2004 and there is no further reversal required for period under dispute - We also note the fact that for 2012-13 and 2013-14, the entire Cenvat credit of appellant stood reversed and adjudicated vide O-I-O which had attained finality as no appeal against the same had been preferred by Department - Also for the period 2014-15, department had issued a spot memo for Rule 6 of Cenvat Credit Rules, 2004 wherein the SCN has been issued much after the expiry of normal period of limitation - There is no ground on which the demand can be raised by invoking extended period of limitation as all the documents were at disposal of Department since 2015 itself and hence the entire demand also fails on the ground of limitation - Demand of Cenvat credit cannot be sustained both on merits and on limitation and is accordingly set aside - Penalty and interest are also not sustainable: CESTAT

**Appeal allowed**

**FINAL ORDER NO. 75860/2021**

**Per: P K Choudhary:**

1. The present appeal has been filed by the Appellant being aggrieved with the Order-in-Original dated 26th July 2019 passed by the Ld. Commissioner, whereby he has confirmed the demand of Cenvat Credit of Rs.2,74,05,591/- for the period 2012-13 to 2016-17, along with interest and imposition of penalty as proposed in the show cause notice dated 04th September, 2018.

2. Briefly stated, the facts of the case are that the Appellant is engaged in the manufacture of different varieties of Biscuits classifiable under Sl. No.19 of the Central Excise Tariff Act, 1985. During the EA 2000 audit of the records of the Appellant for the period 2015-16 to 2016-17, the department had sought for various details and issued two spot memos dated 19/04/2018 and 24/04/2018 as audit observations for the said period. The Appellant had replied to said memos and the same came to be closed. However again the Appellant had received email communication from the audit department in June and July 2018 as regards requisition of certain data for the purposes of values of trading of goods and its respective purchase prices for the period 2012-13 to 2016-17 for the purpose of determining the reversal of Cenvat credit under Rule 6 of the Cenvat Credit Rules, 2004 (CCR, 2004) as the trading of goods was an exempted service w.e.f. 01/04/2011 and since the Appellant was engaged in both manufacture of taxable goods and provision of exempted service, the Appellant had to comply with the provisions of Rule 6 of the CCR, 2004. The Appellant submitted all such data as desired and also informed the department that a demand under Rule 6 of the CCR 2004 for the period 2009-10 to 2013-14 had already been issued to the Appellant vide SCN dated 17/10/2014 and the same had been adjudicated by the Ld. Commissioner vide Order-in-Original dated 21/06/2016 and the same has attained finality. However, the Appellant was issued with the current SCN dated 04/09/2018 invoking extended period of limitation by the audit Commissionerate, which came to be adjudicated by the Ld. Commissioner vide OIO dated 26/07/2019 and the demand was confirmed as proposed in the SCN from 2014-15 onwards and earlier adjudication order dated 21/06/2016 for the period 2012-13 and 2013-14. Hence the present appeal before the Tribunal.

3. Shri Ankit Kanodia, Ld. Advocate, appeared on behalf of the appellant assessee. He submitted that the present dispute is only in respect of follow of proper procedure of Rule 6 of the CCR, 2004 by the Appellant and that the Ld. Adjudicating authority has blindly confirmed the demand of Cenvat credit without taking into account any of the documents as submitted by the Appellant as also ignoring the report of the Ld. Range Superintendent dated 23th July 2019 wherein it has been clearly mentioned that the Appellant has complied with the procedure of Rule 6 of the CCR, 2004 and has reversed Cenvat credit in excess of the actual requirement of reversal of such Cenvat credit. He further submitted that the demand cannot be sustained on the following grounds:

***(a) For the period 2012-13 and 2013-14, the Appellant has already reversed all Cenvat credit for input services as noted in earlier OIO dated 21/06/2016 and hence the question of reversal on account of trading of goods cannot arise as there was no common Cenvat credit on input services availed by the Appellant for the said period.***

***(b) For the period 2014-15, the earlier department audit team for the period 2012-13 to 2014-15 had issued a spot memo dated 29/09/2015 regarding short reversal of Cenvat credit for 2014- 15 against which the Appellant had replied vide its letter dated 12/10/2015 and had reversed an amount of Rs. 614,500/- as reversal on trading of goods under proportionate reversal method under Rule 6(3) of the CCR, 2004 which has also been proposed to be appropriated in the impugned OIO;***

***(c) That for the period 2015-16 and 2016-17, the Appellant has already reversed the common Cenvat credit of input services in its monthly ER 1 returns which includes the amount on account of trading of goods being considered as exempted services and that the Appellant had filed declaration for opting the proportionate reversal method under Rule 6(3) of the CCR, 2004 for both the above years vide its application letter dated 16/04/2015 and 13/04/2016 respectively.***

***(d) That the SCN was issued on the ground that the data submitted by the Appellant during the pre SCN stage needs analysis and hence the Ld. Adjudicating authority would verify the same and issue an adjudication order accordingly.***

***(e) That the Ld. Adjudicating authority had sought a report from the Asst. Commr, Dankuni Division and accordingly all the data was again submitted by the Appellant before the Range Superintendent, Dankuni Division vide the department letter dated 09/07/2019 and replied on 18/07/2019;***

***(f) That the Range Superintendent had submitted its report to the Asst. Commr, Dankuni Division vide its letter dated 23/07/2019 whereas the captioned OIO was passed on 26/07/2019 without taking into account the report of the Range Superintendent;***

***(g) That the Appellant vide an RTI application had seen the said report of the Range Superintendent and it was clear from the said report that no demand can be made as the Appellant had followed all the procedures in compliance with Rule 6 of the CCR, 2004;***

***(h) That the order of the Ld. Adjudicating authority is cryptic and has not discussed any of the aspects put forth by the Appellant leading to gross injustice to the Appellant;***

It is his submission that the demand is also barred by limitation as the demand covers the period from 2012-13 to 2016-17 whereas the SCN was issued on 4TH May, 2018 much after the expiry of normal period of limitation. He further submits that the spot memo for 2014-15 was issued in September 2015 whereas the SCN was issued in May 2018 and thus the question of invoking extended period of limitation does not arise as the department was fully aware of the facts of the case of the Appellant and hence, no penalty is imposable.

4. The learned Authorized Representative appearing on behalf of the respondent department, justified the order of the lower authority.

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

6. In the instant case, the only dispute is regarding compliance of provisions of Rule 6(3) of the CCR, 2004 by the Appellant for the period 2012-13 to 2016-17. From the appeal paper book, it is seen that the Range Superintendent vide its report dated 23/07/2019 at page number 395 of the appeal paper book had provided a detailed report as to the compliance of Rule 6 of CCR, 2004 by the Appellant for the period covered in the SCN and it has been held that the Appellant was in compliance with the procedures laid down and that there has been excess reversal in the years 2014-15 to 2016-17 by the Appellant. We find that the SCN was issued by the Audit Commissionerate to verify the contentions of the Appellant and accordingly the Id. Commissioner adjudicating the case should have taken into account the submissions of the Appellant from pre SCN stage and the report dated 23/07/2019 supra. However, it is seen from the OIO that the Ld. Adjudicating authority has not discussed the submissions both of the Appellant as well as that of the Range Superintendent and confirmed the entire demand without any discussion on the submissions made.

7. We find from the records that the Appellant has complied with all the provisions of Rule 6 of the CCR, 2004 and that there is no further reversal required for the period under dispute. We also note the fact that for 2012-13 and 2013-14, the entire Cenvat credit of the Appellant stood reversed and adjudicated vide OIO dated 21/06/2016 which had attained finality as no appeal against the same had been preferred by the Department. Also for the period 2014-15, the department had issued a spot memo for Rule 6 of CCR, 2004 on 29/09/2015 wherein the SCN has been issued on 04/09/2018 much after the expiry of normal period of limitation. There is no ground on which the demand can be raised by invoking extended period of limitation as all the documents were at the disposal of the Department since 2015 itself and hence the entire demand also fails on the ground of limitation.

8. In view of the discussions referred to above, the demand of Cenvat credit cannot be sustained both on merits and on limitation and is accordingly set aside. Since demand of Cenvat credit is set aside, penalty and interest are also not sustainable.

9. The appeal filed by the Appellant is thus allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 21.12.2021)

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