IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO.4/2014

WITH

CIVIL APPLICATION NO. 4978 OF 2016
IN CENTRAL EXCISE APPEAL NO.4/2014

WITH

CENTRAL EXCISE APPEAL NO.3/2014

WITH

CIVIL APPLICATION NO.3705/2014 IN CENTRAL EXCISE APPEAL NO.3/2014

WITH

CIVIL APPLICATION NO.3707/2014 IN CENTRAL EXCISE APPEAL NO.4/2014

WITH

CENTRAL EXCISE APPEAL NO./5/2014

WITH

CIVIL APPLICATION NO./3708/2014 IN CENTRAL EXCISE APPEAL NO./5/2014

WITH

CENTRAL EXCISE APPEAL NO./6/2014

WITH

CIVIL APPLICATION NO./3709/2014 IN CENTRAL EXCISE APPEAL NO./6/2014

WITH

CENTRAL EXCISE APPEAL NO./7/2014

WITH

CIVIL APPLICATION NO./3710/2014 IN CENTRAL EXCISE APPEAL NO./7/2014

WITH

CIVIL APPLICATION NO./4979/2016 IN CENTRAL EXCISE APPEAL NO./3/2014

WITH

CIVIL APPLICATION NO./4980/2016 IN CENTRAL EXCISE APPEAL NO./7/2014

WITH

CIVIL APPLICATION NO./4981/2016 IN CENTRAL EXCISE APPEAL NO./5/2014

WITH

CIVIL APPLICATION NO./4982/2016 IN CENTRAL EXCISE APPEAL NO./6/2014

COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, AURANGABAD
VERSUS
JOLLY BOARD LIMITED, AURANGABAD AND OTHERS

Advocate for appellant : Mr. D.S. Ladda
Advocate for respondents : Mr. Amit A.Yadkikar

: **S. V. GANGAPURWALA &**
K. L. WADANE, JJ.

DATE : 2nd September, 2016

ORDER:

1. All these appeals are filed by the Department, being aggrieved by the judgment delivered by the CESTAT, West Zonal Bench at Mumbai. The CESTAT had allowed the appeals filed by the respondent-assesee for refund of CENVAT Credit on exempted goods. The Tribunal relied upon the judgment in case of **Commissioner of Central Excise Vs. Drish Shoes LTd.** reported in **2010(254) E.L.T. 417** delivered by Himachal Pradesh High Court.

2. Mr. Ladda learned counsel for appellant strenuously contend that the respondent assesee is not entitled to the benefit of CENVAT Credit on the input or input services of the exempted goods. The judgment delivered

by the Tribunal is not in consonance with the provisions of the Statute and Rules. The learned counsel submits that Rule 6(1) of the CENVAT Credit Rules, 2004 has not been taken into consideration by the Tribunal. Since the assesee is exclusively manufacturing and removing exempted excisable goods, it is not at all eligible to get CENVAT credit of duty paid on inputs and input services used in the manufacture of exempted goods. As the assesee is not eligible to avail the benefit of said CENVAT Credit in terms of Rule 6(1) of the CENVAT Credit Rules, 2004, it was not eligible to claim refund of the unutilized CENVAT Credit of duty paid on input or input services consumed in the manufacture and export of exempted goods in terms of Rule 5 of the CENVAT Credit Rules, 2004. CENVAT credit is allowed only if final products manufactured are dutiable and such credit allowed should be utilized for payment as provided under Sub Rule 4 of Rule 3 of CENVAT Credit Rules, 2004.

3. The learned counsel relies on the judgment of Division Bench of this court in the case of **M/s Oil & Natural Gas Corporation Ltd. Vs. CCE, CST & CC,** reported in **2013(03)LCX005.**

4. The learned counsel further submits that Rule 18 of the Central Excise Rules, 2002 is also not taken into consideration by the Tribunal while allowing the appeal. Procedure as laid down therein is not followed by the Tribunal.

5. Mr.Yadkikar learned counsel for respondent assesee submits that the appeals involving monetary value up to Rs.15 Lakhs are not required to be entertained. Learned counsel submits that the judgment of the Himachal Pradesh High Court in case of Commissioner of Central Excise Vs. Drish Shoes Ltd(supra) is confirmed by the Apex Court in SLP No.2887/2012. The learned counsel submits that the finished goods or end products are exempted and as per the judgment in the case of Commissioner of Central Excise Vs. Drish Shoes Ltd(supra) CENVAT credit would be available in respect of inputs.

6. We have considered the submissions.

7. These appeals can only be entertained on substantial questions of law. As far as contention of the learned counsel for the appellant about observance of Rule 18 of the Central Excise Rules, 2002 is concerned, the same was not a subject matter of

contention before the authorities or the Tribunal nor is raised in the present appeal. Even otherwise, the subject matter involved in the present appeals was also the subject matter before the Himachal Pradesh High Court in case of Commissioner of Central Exices vs. Drish Shoes LTd. (supra), where it has been held by the Himachal Pradesh High Court that as under:

> "16) The scheme of CENVAT Credit Rules,2002, as also 2004, reference to the relevant provisions of which has been made hereinabove, shows that CENVAT credit/ refund is allowed on the inputs of all manufactured goods which are not exempt from duty, as is clear from a combined reading of Rule 3 and sub-rule (1) of Rule 6 of the CENVAT Credit Rules,2002, as also the Rules of 2004,so as to avoid indirect double taxation on inputs. However, this rule is not absolute. It is subject to Exception clause, contained in Rule 6(5) of the Rules of 2002 and 6(6) of the Rules of 2004, and one of the exceptions is in respect of excisable goods, which are cleared for export under bond in terms of the provisions of Central Excise Rules, 2002.
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> 17. Sub-rule (5) of Rule 6 of the Rules of 2002 was applicable only in case of exempted goods. That meant that the exception was not applicable in case of dutiable goods. It

appears that this led to anomalous situations. For example, if the goods were dutiable and were exported, credit for CENVAT could not be claimed in respect of input of those goods, at least under the aforesaid exception clause. To overcome this kind of anomalous situations, exception clause contained in sun-rule (6) if Rule 6 of CENVAT Credit Rules, 2004 has been made applicable to all excisable goods.

18. Learned Counsel for the appellant argued that term 'excisable goods' used in sub-rule (6) of Rule 6 of 2004 Rules, meant only dutiable goods. Submission has been noticed only to be rejected.

19. A Division Bench at Bombay High Court in 2009 (235) E.L.T. 614 (Bom.), Repro India Ltd.v Union of India, while dealing with a similar situation and interpreting the provisions of Rule 6(5) if CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, has held that expression " excisable goods" is wider than the expression "exempted goods", as it includes both dutiable and also exempted goods.

20. In view of the above discussion, we hold that an assessee, manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported. Question No.1 is answered accordingly.

21. As regards question no.2, it is clear from a bare reading of Rule 5 of CENVAT Credit Rules, 2004 that a manufacturer, who exports the final products which are exempt

> from duty, can claim refund of CANVAT. So, this question is also answered against the appellant."

8. It would be clear that in the decision of the Himachal Pradesh High Court, the judgment of this Court in case of **Repro India Ltd.Vs. Union of India** reported in **2009 (235) E.L.T.614(Bom.)** is also relied, wherein it is held that expression "excisable goods" is wider than the expression "exempted goods" as it includes both dutiable and also exempted goods.

9. It is also submitted by the learned counsel Mr.Ladda that the judgment of the Himachal Pradesh High Court in case of Commissioner of Central Excise Vs. Drish Shoes Ltd (Supra) is confirmed by the Apex Court in Appeal No.2887/2012. The learned counsel submits that the judgment in the case of Commissioner of Central Excise Vs. Drish Shoes Ltd (Supra) may not assist the assesee as the said judgment does not consider execution of bond for export of exempted goods.

10. Considering the fact that judgment in the case of Commissioner of Central Excise Vs. Drish Shoes Ltd (Supra) is confirmed by the Apex Court involving

similar issue, no substantial question of law arises in the present appeals. As such the appeals are dismissed. No costs.

11. In view of dismissal of the appeals, pending civil applications stand disposed of.

(K. L. WADANE, J.) **(S. V. GANGAPURWALA, J.)**

JPC