IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 288 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
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COMMISSIONER OF CENTRAL EXCISE AHMEDABAD-II
Versus
MAIZE PRODUCTS
==========
Appearance:
MR CB GUPTA(1685) for the Appellant(s) No. 1
MS ANUJA S NANAVATI(5229) for the Opponent(s) No. 1
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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 21/10/2026

JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr. C B Gupta for the appellant and learned Senior Advocate Mr. Kamal Trivedi and learned Senior Advocate Mr. Devang Nanavati appearing with learned Advocates Mr. Jaimin Dave and Ms. Yogita Verma appearing on behalf of Ms. Anuja Nanavati for the respondent.

2. This appeal is filed under section 35G of the Central

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Excise Act, 1944 (for short *"the Act"*) by appellant - Revenue being aggrieved by the order dated 19.11.2008 passed by Customs, Central Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short "*the CESTAT*") in Excise Appeal No. E/1067 of 2007.

3. This appeal is admitted by order dated 13.07.2009 for consideration of the following substantial questions of law:

> *"I. Whether an assessee is entitled to follow a system different from the system provided under the Rules and still entitled to a benefit of the Rules de hors the Rules?*
>
> *II. Whether the Tribunal is justified in holding that the system followed by the assessee-appellant for availing proportionate credit is in order and accordingly allowed the appeal?"*

4. The brief facts of the case are that the respondent – assessee engaged in manufacture of dutiable and non-dutiable products. For manufacturing process, the respondent utilized two inputs namely Caustic Soda and Hydraulic acid. The revenue took a view that in view of the provisions of Rule 6(3)(b) of the CENVAT

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Credit Rules, 2004 (for short *"the Rules"*) in respect of non-dutiable products assessee was liable to pay 8% of the value as duty since CENVAT credit was availed in respect of the common inputs.

5. Accordingly, show cause notices were issued by the Revenue proposing to recover the amount for the period from April, 2005 to March, 2007 under the provisions of Rule 14 of the Rules read with Section 11A of the Central Excise Act, 1944 with interest and penalties, which are as under:

Sr. No.	SCN No. and date	Period involved	Value of exempted goods cleared	Amount @ 10% of the total price
01	V.17/15-13/ Dem/06 dated 24.03.2006	April, 2005 to December, 2005	20,25,35,876	2,02,53,587
02	V.35/15-38/ Dem/06 dated 03.07.2006	January, 2006 to March, 2006	6,67,69,613	66,76,961
03	V.17/15-86/ Dem/06 dated 09.02.2007	April, 2006 to September, 2006	14,65,39,953	1,46,53,995
04	V.17/15-36/ Dem/07 dated 09.05.2007	October, 2006 to March, 2007	16,87,45,281	1,68,74,528
TOTAL				**58459071**

6. Order-in-Original was passed on 03.08.2007 by the adjudicating authority confirming the demand as per

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the show cause notices on the ground that the assessee did not maintain separate accounts of receipt, consumption and inventory of the inputs, which were used in manufacturing of exempted products in compliance of the provisions of Rule 6 of the Rules and the methodology adopted was not compatible with the requirements of provisions of statutory rules. The adjudicating authority therefore levied duty at the rate of 10% of the price of the exempted by-products i.e., Maize Gluten, Wet Bran, Corn Liquid, Maize Oil Cake, Maize dust and Maize Oil as the assessee did not avail credit in respect of such common inputs i.e., hydrochloric acid, caustic soda lye and furnace oil for such by-products produced out of the manufacturing process.

7. The adjudicating authority therefore relying on Rule 6(3)(b) read with Rule 14 of the Rules confirmed the demand amounting to Rs.5,84,59,071/- as mentioned in the show cause notices along with interest under Section 11AB of the Act read with Rule 14 of the Rules and a penalty of Rs.58,00,000/- as per Rule 15(1) of the Rules.

8. Being aggrieved, the assessee preferred an appeal before the CESTAT. The CESTAT, by the impugned order, held that the issue is squarely covered by the

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decisions cited at bar of the co-ordinate Bench of the CESTAT in case of ***Padmin Poylmers*** reported in ***2003 (151) ELT.358 (Tri. Del.)***, ***Ballarpur Industries Ltd.*** reported in ***2006 (201) ELT.146 (Tri. Mum.)*** **and** ***Rochees Watches Ltd.*** reported in ***2003 (152) ELT.420 (Tri. Deli)***.

9. The CESTAT, in view of the above decisions, held that there was no dispute that the assessee took the credit proportionate to the dutiable products only which would amount to not taking credit. Therefore, the system followed by the assessee of availing only proportionate credit was held to be in order and accordingly the appeal was allowed.

10. Learned Senior Standing Counsel Mr. C B Gupta for the appellant - revenue submitted that the adjudicating authority, after verification of the records, has found that the assessee availed credit of duty paid on hydrochloric acid, caustic soda lye, and furnace oil, which were common inputs and admittedly the assessee has not maintained separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and quantity of inputs meant for use in manufacture of exempted goods, in compliance of the provisions of Rule 6 of the Rules.

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11. It was further submitted that in the absence of separate books of accounts, the assessee could not have adopted its own methodology which is not permitted by the Rules while utilizing credit of the duty to the extent of 75% of the duty paid on inputs i.e., hydrochloric acid and caustic soda lye taking CENVAT credit as per the certificate issued by the chartered accountant and such a system was rightly rejected by the adjudicating authority, is not permissible as per the Rules and the same could not have been approved by the CESTAT as the methodology adopted by the assessee was not in lawful compliance of the provisions of Rule 6 of the Rules. It was therefore submitted that the CESTAT, without assigning any reasons as to how adjudicating authority has committed an error, has merely allowed the appeal by recording its finding in two lines by stating that the assessee took credit proportionate to dutiable products only which would amount to not taking credit, without analyzing that the methodology adopted by the assesseee was not as per the Rule 6 of the Rules.

12. It was further submitted that reliance placed on the decisions on behalf of the assessee before the CESTAT which are followed by CESTAT, are for availing the moderate credit as per the earlier provisions.

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13. It was therefore submitted that the CESTAT could not have referred and relied upon the decisions pertaining to the Rules which are not applicable in the facts of the case.

14. Per contra learned Senior Advocate Mr. Kamal Trivedi and learned Senior Advocate Mr. Devang Nanavati appearing with learned Advocates Mr. Jaimin Dave and Ms. Yogita Verma appearing on behalf of Ms. Anuja Nanavati for the respondent submitted that the issue is no more *res integra* in view of the decision of this Court in case of the assessee reported in ***2010 (8) SCC Online Guj 467***, against which SLP is also dismissed by the Hon'ble Apex Court by order dated 20.11.2009.

15. Reliance was also placed on a similar question considered by this Court in Tax Appeal No. 49 of 2024 in the case of ***Commissioner of Central GST and Central Excise, Bharuch vs. Hindalco Industries Limited, reported in 2024 (9) TMI 837***, wherein in similar facts, the appeal filed by the revenue was dismissed.

16. Learned Senior Advocate Mr. Trivedi also referred to and relied upon the following decisions:

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I. Central GST and Central Excise, Vadodara – II Vs. M/s. P.I. Industries dated 02.07.2024 passed in Tax Appeal No. 318 of 2024

II. Commissioner of Central Excise & Customs Vadodara-I Vs. Sterling Gelatine reported in (2008) SCC Online Guj 10182

III. Commissioner of Central & Excise Vs. M/s. Sterling Gelatine dated 18.09.2014 passed in Civil Appeal Nos. 3035-3036 of 2011 (SC)

IV. Principal Commissioner, Central GST and Central Excise Vs. Reliance Industries reported in (2008) SCC Online Guj 684

V. Union of India Vs. Hindustan Zinc reported in (2015) 15 SCC 312

17. Referring to the above settled legal position, it was submitted that when the assessee has availed only the proportionate credit on the inputs meant for the manufacture of the dutiable final products and the quantity of inputs meant for manufacture of exempted goods, there is no legal infirmity in the order passed by the CESTAT.

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18. Having heard learned advocates for the respective parties and considering the facts of the case, we are of the opinion that the issue is squarely covered in favour of the assessee in view of the decision of this Court in the case of ***Hindalco Industries Limited (supra)***, wherein it is held as under:

> *"[5] Having considered the impugned orders, we are of the opinion that the Tribunal has rightly held that the issue raised in the appeals are no more res integra as the same has already been settled by the Hon'ble Supreme Court in the case of Hindustan Zinc Ltd (supra), which is followed by the Tribunal in the case of Sterlite Industries India Ltd (supra). The Tribunal has, extracted the relevant observations from the decision in the case of Sterlite Industries India Ltd (supra), wherein the decision of the Hon'ble Supreme Court is also referred to, as under:*
>
> > *"6. After careful consideration of the submissions of both sides and on perusal of records, we find the short issue involved in the appeal relates to denial of benefit of captive consumption Notification No. 67/95- C.E., dated 16-3-1995 on the oxygen gas produced and captively consumed in the manufacture of Copper Anode. The adjudicating authority in his de novo order denied the exemption only on the ground that Sulphuric Acid (H2SO4) is a final product cleared at 'Nil' rate and held that since oxygen is captively used in the manufacture of Copper Anode (dutiable) and Sulphuric Acid (exempted) they are not eligible for Notification No. 67/95. We find that H2SO4 was cleared at Nil rate*

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the fertilizer plant claiming exemption under Sl. No. 28 of Notification No. 6/97, dated 1-3-1997.

7. On careful study of manufacturing process as explained in the proceedings, we find that the appellants have set up a plant only for manufacture of final product copper anode from the imported copper concentrate. It is seen that Oxygen is one of the essential inputs for conversion of Copper Concentrate into Copper Anode and it is used in the furnace and in the smelter converter to remove impurities contained in the copper concentrate. In the process of purification, sulphur dioxide SO2 emerges out as waste gas. However, due to stringent conditions imposed by the Environment Ministry, the sulphur dioxide cannot be let off by the industries. As per Environment (Protection) Rules, 1986, it is a mandatory requirement of appellant unit to process the harmful gases without letting out in the atmosphere. Further, as evident from their reply to SCN before adjudicating authority that oxygen is so generated in the plant is captively consumed only in the process of conversion of copper concentrate to copper anode and not in the manufacture of Sulphuric Acid.

8. During the process of conversion of SO2 to SO3, one more element of oxygen is added and this additional element of oxygen is not taken from the oxygen plant but from the atmosphere. The Sulphur Dioxide (SO2) combines with atmospheric oxygen and gets converted into Sulphur Trioxide (SO3). This Sulphur Trioxide is absorbed in Sulphuric Acid to form Oleum. This super-saturated Oleum is dissolved in water to produce 98% pure Sulphuric Acid (H2SO4) i.e. the fourth element of oxygen is derived from water. This fact is easily verifiable

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from the manufacturing process. It is evident that oxygen produced in their plant is captively consumed and used only in the copper concentrate for purification and not diverted elsewhere for process of conversion of SO2 or SO3 or to Sulphuric Acid. Therefore, on merit itself it is established that oxygen produced captively is not used as an input in the manufacture of Sulphuric Acid and appellant is eligible for Notification No. 67/95 on oxygen on merit.

9. Further, it is pertinent to state that so long as Oxygen produced in their plant is used captively in the manufacture of final product (i.e.) copper concentrate and cleared on payment of duty, the appellants are rightly eligible for exemption under Notification No. 67/95 for oxygen. The case of the department is that appellant used the inputs i.e. oxygen in the manufacture of Sulphuric Acid which is cleared at Nil rate under exemption notification. As discussed in the preceding paragraphs and it is established from the chemical process and from manufacturing process there is no justification for the revenue's view that O2 is used in the manufacture of H2SO4. It is evident that oxygen so produced in their captive plant is used only in the purification of copper concentrate in the manufacture of copper anode. Therefore, appellants are eligible for captive consumption of Oxygen under Notification No. 67/95 as the final product copper anode is excisable which is cleared on payment of duty.

10. Notwithstanding above, we find that Hon'ble Supreme Court in the case of UOI v. Hindustan Zinc Ltd. (supra) clearly held that what is manufactured in the final product is only copper only. In that case,

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Sulphur Dioxide was converted into sulphuric acid which cannot be considered as a final product but it is only a by-product. In view of the above facts, appellants are eligible for Modvat credit. The relevant paragraph of the Apex Court judgment is reproduced as under:-

> *"2. At the outset, the controversy involved may be reflected by pointing out that the questions for consideration are as to the entitlement of the respondents/assessees to Modvat/Cenvat credit for the use of inputs in the manufacture of final products which are exempt or subject to nil rate of duty and the requirement of the assessee to maintain separate accounts with respect to inputs used in dutiable goods as well as exempted goods and the liability arising on the failure of the assessee to maintain such separate accounts. In Civil Appeal Nos. 8621-8630 of 2010, we are concerned with sulphuric acid. In Civil Appeal No. 8631 of 2010, it is caustic soda flakes and trichloro ethylene. In Civil Appeal No. 2337 of 2011, the product is again sulphuric acid and in the case of Civil Appeal No. 5322 of 2010 and the other connected matter of M/s. Rallis India Ltd., it is Phosphoryl A and Phosphoryl B. The issue is as to whether the assessees (respondents) are entitled to Modvat/Cenvat credit on inputs used in the manufacture of the aforementioned exempted (or subject to NIL rate of duty) final products.*
>
> *.... ....*
>
> *16. Before we advert to the interpretations of the aforesaid provisions and to discuss the argument of the Union of India as to whether literal interpretation is to be given to Rule 57CC, it would be necessary to understand the*

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properties of sulphuric acid. From what is explained above including the use of sulphuric acid for the production of zinc, it becomes apparent that sulphuric acid is indeed a by-product. In fact, it is so treated by the respondents in their balance sheet as well as various other documents which were filed by the respondents in the courts below. It is also a common case of the parties that Hindustan Zinc Limited and Birla Copper were established to produce zinc and copper respectively and not for the production of sulphuric acid. It was argued by the learned Counsel for the respondents, which could not be disputed by the learned Solicitor General, that emergence of sulphur dioxide in the calcination process of concentrated ore is a technological necessity and then conversion of the same into sulphuric acid as a non- polluting measure cannot elevate the sulphuric acid to the status of final product. Technologically, commercially and in common parlance, sulphuric acid is treated as a by-product in extraction of non-ferrous metals by companies not only in India but all over the world. That is the reason why the department accepted the position before the Tribunal that sulphuric acid is a by-product.

....

20. Let us now examine the position contained in Rule 57CC on the touchstone of the aforesaid position. No doubt, Rule 57CC requires an assessee to maintain separate records for inputs which are used in the manufacture of two or more final products one of which is dutiable and the other is non-dutiable. In that event, Rule 57CC will apply. For example, a tyre manufacturer manufactures different kinds of

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tyres, one or more of which were exempt like tyre used in animal carts and cycle tyre, where car tyres and truck tyres attract excise duty. The rubber, the accelerators, the retarders, the fillers, sulphur, vulcanising agents which are used in production of tyres are indeed common to both dutiable and exempt tyres. Such assessees are mandated to maintain separate records to avoid the duty demand of 8% on exempted tyres. But when we find that in the case of the respondents, it is not as though some quantity of zinc ore concentrate has gone into the production of sulphuric acid, applicability of Rule 57CC can be attracted. As pointed out above, the entire quantity of zinc has indeed been used in the production of zinc and no part can be traced in the sulphuric acid. It is for this reason, the respondents maintained the inventory of zinc concentrate for the production of zinc and we agree with the submission of the respondents that there was no necessity and indeed it is impossible, to maintain separate records for zinc concentrate used in the production of sulphuric acid. We, therefore, agree with the High Court that the requirements of 57CC were fully met in the way in which the Respondent was maintaining records and inventory and the mischief of recovery of 8% under Rule 57CC on exempted sulphuric acid is not attracted.

....

25. These arguments may seem to be attractive. However, having regard to the processes involved, which is already explained above and the reasons afforded by us, we express our inability to be persuaded by these submissions. We have already noticed above that in the case of Birla Copper (C.A. No. 2337 of 2011) the

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Tribunal has decided the matter following the judgment in the case of Swadeshi Limited (supra). In that case, Ethylene Glycol was reacted with DMT to produce polyester and ethanol. Methanol was not excisable while polyester fibre was liable to excise duty. Credit was taken of duty paid on ethylene glycol wholly for the payment of duty on polyester. The department took a position that ethylene glycol was used in the production of methanol and proportionate credit taken on ethylene glycol was to be reversed. This Court ruled that the emergence of methanol was a technological necessity and no part of ethylene glycol could be said to have been used in production of methanol and indeed it was held that the total quantity of ethylene glycol was used for the production of polyester. The fact in all these three appeals appear to be identical to the facts and the law laid down in Swadeshi Polytex (supra). Therefore, this judgment is squarely applicable.

26. Furthermore, the provisions of Rule 57CC cannot be read in isolation. In order to understand the scheme of Modvat credit contained in this Rule, a combined reading of Rules 57A, 57B and 57D along with Rule 57CC becomes inevitable. We have already reproduced Rule 57D above. It can be easily discerned from a combined reading of the aforesaid provisions that the terms used are 'inputs', 'final products', 'byproduct', 'waste products', etc. We are of the opinion that these terms have been used taking into account commercial reality in trade. In that context when we scan through Rule 57CC, reference to final product being manufactured with the same common inputs becomes

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understandable. This Rule did not talk about emergence of final product and a by-product and still said that Rule 57CC will apply. The appellant seeks to apply Rule 57CC when Rule 57D does not talk about application of Rule 57CC to final product and by-product when the byproduct emerged as a technological necessity. Accepting the argument of the appellant would amount to equating byproduct and final product thereby obliterating the difference though recognised by the legislation itself. Significantly this interpretation by the Tribunal in Sterlite (supra) was not appealed against by the department."

The Hon'ble Apex Court is clearly applicable to the facts of the case as in the present case the sulphuric acid is cleared as byproduct as explained in the preceding paragraphs and the final product is only copper anode and not sulphuric acid. The waste gas which emerges out out of process of purification of copper concentrate in Sulphur Dioxide which is further converted into Sulphur Trioxide which is absorbed in Sulphuric Acid to form Oleum. This Oleum is dissolved in water to get purest form of Sulphuric Acid. It is pertinent to state that under the Environment (Protection) Rules, 1986 vide sub-rule (2) of Schedule I and as per Sl. No. 21 of the Schedule I of the Environment Rules, it is mandatory for the appellant to prevent emission of oxides of sulphur in Smelter and Convertor of copper and it stipulates that waste gases are to be utilized in the manufacture of Sulphuric Acid so as to prevent emission of Sulphur Dioxide. The Apex Court decision cited supra dealt with the identical issue of conversion of Sulphur Dioxide and Sulphur Trioxide into sulphuric acid and held it is only a

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byproduct and not final product.

9. Further, we find this Tribunal Bench in an identical issue of captive consumption Notification No. 67/95 in the case of Ultratech Cement and Others v. CCE – 2015- TIOL-2110-CESTAT-MAD had allowed the benefit of Notification No. 67/95-C.E.

10. Further, we find that as per Notification No. 67/95, both input oxygen and the final products are rightly covered in the Table of the Notification. Proviso (vi) of the notification stipulates that this notification is applicable provided appellant complied with Rule (6) of CCR, 2001. The only condition is that sub-rule (2) of Rule 6 of CCR is required to be complied with. In the present case, as per sub-rule (2), appellant manufactured oxygen used in the manufacture of excisable product and they had no obligation to maintain separate accounts for oxygen used in the manufacture of Sulphuric Acid. It is established that appellant did not use oxygen produced in the manufacture of Sulphuric Acid. Accordingly, conditions of Notification No. 67/95 are complied. By respectfully following the Apex Court decision in the case of UOI v. Hindustan Zinc Ltd. (supra), we hold that appellants are eligible for benefit of Notification No. 67/95 and the duty demand on the quantity of oxygen so used in the manufacture of sulphuric acid, is liable to be set aside. Consequently, no penalty survives and it is set aside. Impugned order is set aside and the appeal is allowed."

[6] Thus, considering the observations made by the Hon'ble Apex Court in the case of Hindustan Zinc Ltd (supra) which are applied in similar facts in the case of

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Sterlite Industries India Ltd (supra), the Tribunal has set aside the order passed by the adjudicating authority as the byproduct and the final product is only Copper Cathodes and not a Sulphuric Acid. The Tribunal, in the case of Sterlite Industries India Ltd (supra) has considered that the waste gas which emerges out of process of purification of copper concentrate in Sulphur Dioxide which is further converted into Sulphur Trioxide which is absorbed in Sulphuric Acid to form Oleum and this Oleum is dissolved in water to get purest form of Sulphuric Acid. The Tribunal has also referred to the various provisions of the Environment (Protection) Rules, 1986 which provides that it is mandatory for the respondent to prevent emission of oxides of sulphur in Smelter and Convertor of copper and it stipulates that waste gases are to be utilized in the manufacture of Sulphuric Acid so as to prevent emission of Sulphur Dioxide. The Hon'ble Apex Court has dealt with the similar issue in the case of Hindustan Zinc Ltd (supra). Therefore, in the facts of the case and Sulphuric Acid is not a final product, but is a byproduct and the Tribunal relying upon the aforesaid decisions has held that the respondent is entitled to the benefit of Notification No.67/1995.

[7] For the foregoing reasons, we are of the view that the findings of fact recorded by the Tribunal in the impugned order cannot be termed as perverse or contrary to the evidence on record. In the overall view of the matter, we are convinced that the decision of the Tribunal is correct and requires no interference."

19. In view of the above settled legal position, we are of the opinion that there is no legal infirmity in the impugned order of the CESTAT in as much as the Hon'ble

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Supreme Court in the case of ***Union of India vs. Hindustan Zinc Limited, reported in 2014 (303) ELT 321***, as well as the decision in the case of ***Sterlite Industries India Ltd Vs. CCE, Tirunelveli*** reported in ***2015 (331) ELT 255 (Tri. Chennai)***, which is considered by this Court in the case of ***Hindalco Industries Limited(supra)***, to hold that the manufactured final product was subjected to proportionate CENVAT credit and accordingly, the by-product which is produced as a manufacturing process of the final product cannot be considered for utilizing the inputs for such exempted by-products.

20. Rule 6(3)(b) of the Rules reads as under:

> ***"6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.-***
>
> *(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:-*
>
> > *(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at*

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the time of their clearance from the factory;"

21. In the case of ***Sterling Gelatin (supra)***, this Court while considering the similar facts has held as under:

> *"8. Thus, on a plain reading sub-rule (1) of rule 6, it is apparent that CENVAT credit is admissible in respect of the inputs used in the manufacture of dutiable goods and is inadmissible on such quantity of inputs which is used in the manufacture of exempted goods. Sub-rule (2) imposes an obligation on the manufacturer who manufactures final products and exempted goods from the common input to maintain separate accounts for receipt, consumption and inventory of inputs. Examining the applicability of the aforesaid rules to the facts of the present case, as noted hereinabove, it is not as if more quantity of Hydrochloric Acid is used than that required for manufacturing Gelatin or that by using a smaller amount of Hydrochloric Acid, the production of Mother Liquor could be averted. In the manufacturing process adopted by the assessee, it is not possible to manufacture Gelatin without Mother Liquor coming into existence. Thus, when the entire quantity of input viz. Hydrochloric Acid is used in the manufacture of the final product being Gelatin which is a dutiable product, the mere fact that a by-product emerges during the process would not bring the by-product within the ambit of Rule 6 of the Rules so as to call for maintaining separate accounts in respect of the same. When the entire quantity of input is used in the manufacture of Gelatin, the question of maintaining separate accounts or of paying a percentage of the total price of the exempted goods would not arise. In the peculiar facts of the present case, sub-rule (1) of rule 6, itself would not come into play inasmuch the manufacturer does not deliberately use any quantity of*

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the inputs, viz. Hydrochloric Acid for manufacturing Mother Liquor, the entire Hydrochloric Acid is used in the manufacture of Gelatin. Thus, when no input is specifically used for the purpose of manufacturing Di-Calcium Phosphate, there would be no question of maintaining separate accounts for receipt, consumption and inventory of input.

12. On behalf of the appellant it has been submitted that common input Hydrochloric Acid was used in the manufacture of both Gelatin as well as Di-Calcium Phosphate hence, in the light of the provisions of rule 6(2) of the Cenvat Credit Rules, 2002, the respondent was required to maintain separate accounts for receipt, consumption and inventory of input meant for use in the manufacture of dutiable final products and the quantity of input meant for use in the manufacture of exempted products and take cenvat credit only on that quantity of input which was intended for use in the manufacture of dutiable goods. In the present case, the assessee has taken cenvat credit only on that quantity of input, which was intended for use in the manufacture of dutiable goods, therefore, also the question of invoking sub-rule (2) of Rule 6 of the Rules would not arise.

14. In the light of the view taken by the Court, it is immaterial as to whether or not the new applicable rules, viz., Cenvat Credit Rules, 2002/2004 contain any provisions akin to Rule 57CC and Rule 57D of the erstwhile Central Excise Rules, 1944."

22. SLP against the decision in the case of Sterling Gelatin has also been dismissed.

23. The decision of ***Sterling Gelatin (supra)*** was also

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followed by this Court in the case of ***Reliance Industries Limited (supra)*** in similar facts, where it was held that the issue whether the LPG is a by-product or otherwise was academic and was not decided.

24. In view of the above conspectus of law and applying to the facts of the present case, we are of the opinion that the CESTAT though has not given elaborate reasons, but has arrived at a conclusion as per the settled legal position. Therefore, instead of remanding the matter back to the CESTAT for giving elaborate reasons and considering the pendency of this appeal since 2009 and in view of the subsequent decisions which are of this Court as well as Hon'ble Apex Court, we answer the questions in favour of the assessee and against the revenue as the CESTAT was justified in holding that the system followed by the assessee for availing proportionate credit is in order and has rightly allowed the appeals.

25. This appeal preferred by the revenue is accordingly ***dismissed***.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI,J)

Anuj

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