

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2**

EXCISE APPEAL NO. 11000 OF 2018 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-701-702-2017-18 dated 07/12/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Solvay Specialities India Pvt Ltd

Plot No. 3526-27,GIDC, Panoli,
Bharuch, Gujarat

.....Appellant

Versus

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

.....Respondent

With

EXCISE APPEAL NO. 11001 OF 2018 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-701-702-2017-18 dated 07/12/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Solvay Specialities India Pvt Ltd

Plot No. 3526-27,GIDC, Panoli,
Bharuch, Gujarat

.....Appellant

Versus

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

.....Respondent

Appearance:

Shri Hardik Modh, Advocate for the Appellant

Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. 12020-12021/2024

DATE OF HEARING: **18/06/2024**
DATE OF DECISION: **13.09.2024**

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay an amount equal to 6% upon the difference between the sale price and the purchase price of the goods traded when the credit on common input service was availed by appellant such common service was used in the trading of goods as well as manufactured goods cleared on payment of duty.

2. Shri Hardik Modh learned Counsel appearing on behalf of the appellant submits that the appellant have admittedly paid the proportionate CENVAT Credit attributed to the trading goods along with interest from the date of availment of credit till the reversal thereof.

He submits that such proportionate credit was reversed in terms of Rule 6 (3) (2) for the period of 2014-2015 and intimated to the Central Excise Department about such reversal of credit vide letter dated 09.11.2016. Therefore, the demand equal to 6% on the traded goods (exempted service) is not sustainable as held in following judgments:-

- Emami Limited Versus C.C.E & S.T. -Valsad 2023 (8) TMI 1232
CESTAT Ahmedabad
- M/s Central UP Gas Ltd. Versus Commissioner of Customs,
Central Excise & Service Tax, Kanpur - 2024 (6) TMI 491 Cestat
Allahabad
- Biochem Pharmaceuticals Industries Ltd. Versus C.C.E. & S.T.
Daman. 2021 (10) TMI 1285 Cestat Ahmedabad
- M/s. Steel Authority of India Limited Versus Commissioner OF
Central Excise & Service Tax, Durgapur 2021 (5) TMI 441
Cestat Kolkata
- PI Industries Versus Commissioner OF Central Excise & ST,
Surat-II- 2023 (6) TMI 455 - Cestat Ahmedabad

- BHEL-GE Gas Turbine Services Private Ltd. Versus
Commissioner of Customs, Central Excise & Service Tax
Secunderabad-GST 1367 Cestat Hyderabad 2020 (2) TMI

3. Shri P. Ganesan, Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the record. We find that the demand of CENVAT Credit was raised which is equal to 6% of difference between the purchase price and sale price of trading goods in terms of Rule 6 (3). However, it is also not in dispute that the appellant have reversed the proportionate credit along with payment of interest. Therefore, after such reversal and payment of interest for the delayed period i.e. from the date of taking credit till the date of reversal of proportionate credit the demand equal to 6% under Rule 6 (3) shall not sustain as held in numerous Judgments, some of the Judgments are cited above by the appellant.

5. Therefore, the demand is not sustainable. Hence the impugned order is set aside. Appeal is allowed.

*(Pronounced in the open court on **13.09.2024**)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

AD