

(2024) 04 CESTAT CK 0004**Customs, Excise And Service Tax Appellate, Ahmedabad****Case No:** Excise Appeal No. 11995 Of 2016

M/S. Hindustan Chemicals
Company

APPELLANT

Vs

C.C.E & S.T-Surat-II

RESPONDENT

Date of Decision: April 3, 2024**Acts Referred:**

- cenvat Credit Rules, 2004 - Rule 3, 6, 6(3), 6(3)(1), 13

Hon'ble Judges: Ramesh Nair, Member (J); Raju, Member (T)**Bench:** Division Bench**Advocate:** Dhaval K Shah, P. Ganesan**Final Decision:** Allowed**Judgement**

Raju Member, (J)

1. This appeal has been filed by the Hindustan Chemical Company against demand of reversal of Cenvat Credit availed by them.

2. Learned Counsel pointed out that they are basically engaged in production and clearance of Potassium Cyanide and Sodium Cyanide, falling under Chapter 28 of the First Schedule to the Central Excise Tariff Act, 1995. They had opted for CENVAT CREDIT SCHEME. He pointed out that the production of Potassium Cyanide and Sodium Cyanide, they are first required to produce Hydrocyanic Acid Gas, by reacting Ammonia Methane and Air, in the present of Platinum-Rhodium Catalyst, at a Temperature of around 1100° C. Hydrocyanic Acid Gas, is then converted into Potassium Cyanide and Sodium Cyanide by neutralizing the same, with Potassium Hydroxide or Sodium Hydroxide. During production of Hydrocyanic Acid Gas, some excess Ammonia is left over in the Reaction System, which is required to be removed from the Reaction System, otherwise Hydrocyanic Acid Gas can polymerise into unwarranted product and Potassium Cyanide and Sodium Cyanide, cannot be produced. The said Ammonia is therefore neutralized by using another input, namely Sulphuric Acid, which generated Ammonium Sulphate, which falls under Chapter 31 of the First Schedule to the said Tariff Act and being Fertiliser, the same is exempt from payment of Central Excise duty.

2.1 Learned Counsel for the appellant pointed out that the appellants are engaged in manufacture of various products including Ammonium Sulphate. The appellant availed the benefit of Notification No. 12/2012-C.E dated 17.03.2012 which prescribed Concessional Rate of Duty at the rate of 1% on goods falling under Chapter 31. The said benefit of notification was subject to fulfilment of condition 25 of notification, which prescribed that the appellant could not avail the Cenvat Credit under Rule 3 or Rule 13 of Cenvat Credit Rules, in respect of input or input services used in the manufacture of

the said goods. Learned Counsel pointed out that Ammonium Sulphate is a fertilizer falling under Chapter 31 of the first schedule to the Central Excise Act, 1985. He argued that when goods are removed from the factory, it was clearly recognizable for use as fertilizer. No central excise duty is payable either at the rate of 1% Ad valorem, under Notification 1/2011-CE or @6% Ad Valorem under the notification 2/2011 - CE as the said fertilizer was exempt from payment of Central Excise duty, prior to 17.03.2012 under serial entry no. 63 of the erstwhile notification, 4/2006 - CE dated 01.03.2006 and with effect from 17.03.2012 vide serial nos. 127 & 128 of the notification no. 12/2012 - CE dated 17.03.2012. He argued that the demand of Central Excise duty at the rate of 6% ad valorem, under notification no. 2/2011 - CE dated 01.03.2011, as the appellant had availed of Cenvat Credit scheme, against duty inadvertently, paid at the rate of 1% ad valorem, under notification no. 1/2011-CE dated 01.03.2011, is unsustainable. He argued that Ammonium Sulphate, being a by product of their plant, even if, it is removed under full exemption, after having claimed Cenvat Credit of duty, paid on inputs, provisions of rule 6(3)(1) of the Cenvat Credit Rules, 2004 are not attracted.

2.2 He argued that Ammonium Sulphate is unwarranted product for them and total turnover of Ammonium Sulphate is very small against the total turnover of Potassium Cyanide and Sodium Cyanide. He argued that the technology created in the unit is not for production of Ammonium Sulphate but it is for production of Potassium Cyanide and Sodium Cyanide and therefore Ammonium Sulphate is merely unwarranted by-product, generated due to technology and environment constrains as the left over in the reaction vessel cannot be released in atmosphere. He relied on the decision of Tribunal in their own case vide order No. A/12581/2021 dated 02.12.2021 and order No. A/11905/2016 dated 26.12.2016. He pointed out that in both these decisions, it has been clearly stated that Aluminium Sulphate is a by- product and therefore examined for the provision of Rule 6 of the (3) of the Cenvat Credit Rules, in terms of the decision of Hon'ble High Court of Gujarat in the case of C.C.E & Customs, Vadodara-I Vs. Sterling Gelatin-2011 (270) E.L.T. 200 (Guj.). Learned Counsel also submitted detailed process of manufacture contained in their letter dated 18.11.2023.

3. Learned AR relies on the impugned order.

4. We find that the issue re *integra*, the matter has been decided by this Tribunal in appellant's own case vide Final Order No. A/12581/2021 dated 21.02.2021 and order No A/11905/2016 dated 26.12.2016. In order dated 02.12.2021 following has been observed:-

5. The issue is that whether Ammonium Sulphate is a by-product and whether Rule 6(3) is applicable in respect of clearance of such by-product. This Issue has been considered by this Tribunal in the appellant's own case of M / s Hindustan Chemical Company vide Order No. A / 11905 / 2016 dated 26.12.2016, wherein the Tribunal has passed the following order.

"5. Heard both sides and perused the records. I find that the applicability of Rule 6 of CCR, 2004 to by-product is no more res- *Integra* being settled by the Hon'ble Gujarat High Court In the aforesaid cases. The appellant through technical certificates/opinions has fairly established that during the course of manufacture of finished goods, what emerges is Ammonium Sulphate as a by- product and no contrary opinion/evidence adduced by Revenue. Therefore, the principle laid down in the aforesaid cases, is applicable to the facts of the present case. Consequently, the Impugned order being devoid of merit, set-aside and the appeal is allowed with consequential relief, if any, as per law."

6. In view of the above decision of this Tribunal since the issue has been settled that Ammonium Sulphate being a by-product arising in the course of manufacture of final product, the demand under Rule 6(3) is not applicable. Accordingly, In the present case also being a similar issue, demand is not sustainable. The impugned order is set aside, appeal is allowed.

Relying on the aforesaid decision, we do not find any merit in the impugned order and same is set aside.

5. Appeal is allowed.