



TAX ALERT

***Failure to give intimation
cannot deny reversal of
credit as per Rule 6(3) (ii)
of the CENVAT Credit
Rules, 2004***



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FAILURE TO GIVE INTIMATION DOES NOT LAY RESTRICTION FOR REVERSAL OF PROPORTIONATE CREDIT AS PRESCRIBED IN RULE 6(3) (ii) OF THE CENVAT CREDIT RULES, 2004

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Issue: Whether the option to reverse CENVAT credit, under Rule 6(3) (ii) of the CENVAT credit rules, 2004 (CCR) be denied merely on the ground that no intimation was given to the department?

Period Involved: March '2009-September' 2009

Facts: Assessee is a manufacturer of M.S. galvanized towers & tower parts. They had supplied tower and tower parts to M/s RRB Energy Ltd., which were used by them as parts of wind Operated Electricity Generator (WOEG) and claimed exemption of duty under Notification No.6/2006-CE. Show Cause Notice (SCN) was issued denying benefit of exemption. After adjudication, the aforesaid proceedings were dropped. Further another SCN was issued alleging that common inputs and input services were used in the manufacture of exempted goods and the assessee did not maintain separate records for the same. SCN raised demand of Rs. 26, 55,364/- along with interest and penalty. The assessee carried the issue in appeal.

Revenue Contention: Revenue contended that the assessee has exercised the second option prescribed under rule 6(3) (ii) for reversal of proportionate credit and it was mandatory to intimate the department about it. Further contended that the section uses the word 'shall' and therefore the requirement to intimate the department cannot be directory. As the appellants have not intimated, as to which option will be exercised by them for calculation of reversal of CENVAT credit so they are bound to pay duty under the first option as prescribed in Rule 6(3) (i) of CCR. Hence demand of duty, interest and penalty was confirmed by the commissioner. Further in case the assessee, if allowed to reverse the credit, the matter has to be remanded for quantification of the proportionate credit.

Appellant Contention: The appellant contended on following grounds:-

- It was impossible for them to maintain separate accounts for dutiable and exempted goods due to complex manufacturing activity.
- According to Rule 6(3) of the CCR, there are two options available to the assessee who does not maintain separate accounts with respect to dutiable and exempted goods/ services. In the given case, second option of proportionate reversal under Rule 6(3)(ii) was exercised as it resulted in lower payment of duty of Rs. 3,70,612/- as compared to first option under Rule 6(3)(i) which resulted in payment of duty of Rs. 24,55,364/-. So the assessee reversed credit as per the second option amounting to Rs. 3,70,612/-
- Mere failure to intimate the department about the exercise of second option cannot render that Rule 6(3) (i) would automatically apply. It was only a technical breach.*



TAX ALERT

- They did not utilize any CENVAT credit availed during the period March'2009 to September'2009 on the inputs used in the manufacture of exempted goods. A statement was also before the authorities showing CENVAT credit balance.

Tribunal's Observation: The Hon'ble Tribunal taking reference of Rule 6(3A) states that the Rule does not mention that failure, to intimate in writing to the department regarding option exercised, would lose his choice to avail the second option for reversal of CENVAT credit under Rule 6(3) (ii). In any case it cannot be said that failure to intimate the department would automatically result in application of Rule 6(3)(i) on the assessee. Further as observed in various cases¹ the failure of intimation to the department is only a procedural failure. Further in respect to remand of the matter, asked by the revenue for quantification of the proportionate credit, the Hon'ble Tribunal stated that the Revenue has not disputed any figures in SCN and hence such ground cannot be taken at this stage. In such circumstances it was observed that failure to give intimation was merely a procedural lapse, so the substantive benefit of reversal of proportionate credit as prescribed in rule 6(3) (ii) of the CENVAT credit rules, 2004 cannot be denied.

¹Mercedes Benz India (P) Ltd. Vs. CCE, Pune-I

¹Rathi Daga Vs. CCE, Nashik [2015(38) STR (Tri. Mum)]

¹Foods, Fats & Fertilizers Ltd. Vs. CCE, Guntur [2009(247) ELT 209 (Tri. Bang)]