

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**EXCISE APPEAL No. 51552 of 2022**

(Arising out of Order-in-Original No. ALW-EXCUS-000-COM-029-031-21-22 dated 25.10.2021 passed by the Principal Commissioner of CGST & CX Alwar)

**The Principal Commissioner of CGST & CX, Alwar ....Appellant**  
a-Block, Surya Nagar,  
Alwar, Rajasthan-301001

Versus

**M/s Sharp Menthol India Ltd. ....Respondent**  
F-76-C & D,  
RIICO Industrial Area, Bhiwadi, Alwar

**WITH**

**E/51586 of 2022 and E/51587/2022**

**APPEARANCE:**

Shri Bhagwat Dayal, authorised representative for the department  
Shri Mihir Mehta, advocate for the respondent

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing : 18.05.2026**

**Date of Decision : 05.06.2026**

**FINAL ORDER NOS. \_\_\_\_\_/2026**

**JUSTICE DILIP GUPTA:**

All the aforesaid three appeals have been filed by the department to assail the order dated 28.10.2021 passed by the Principal Commissioner dropping the proceedings initiated against M/s Sharp Menthol India Ltd<sup>1</sup> by the three show cause notices dated 03.04.2009, 06.04.2010 and 01.02.2011.

2. The first show cause notice was issued for the period March 2009 to February 2009; the second show cause notice was issued for the period March 2009 to December 2009; and the third show cause notice was issued for the period January 2010 to September 2010.

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**1. Sharp Menthol**

3. Sharp Menthol was engaged in the manufacture of Menthol Crystal, Menthol BP/USP and other flavouring material such as Mentha Piperita Oil, Menthol (liquid), Rectified Spearmint Oil and Menthone. For the purpose of manufacturing the above products, it procured inputs namely Menthol, Dementholised Oil, De-terpenated Fractionated Mentha Oil and Mentha Piperita Oil on payment of duty from manufacturers located in Jammu. The said manufacturers were availing benefit of exemption under Notification No. 56 of 2002-CE dated 04.11.2002<sup>2</sup>, as amended time to time. Sharp Menthol availed CENVAT credit of the duty paid on the above inputs in terms of rule 12 of CENVAT Credit Rules, 2004.<sup>3</sup>

4. By a Notification No. 4/2008 dated 01.02.2008, Menthol Crystals and Menthol, which are the final products manufactured by Sharp Menthol, were exempted from payment of central excises duty. Rest of the products manufactured by Sharp Menthol continued to be dutiable.

5. By a Notification No. 10/2010 dated 01.03.2010, the other products namely Menthol Piperita Oil, Menthol (liquid), Rectified Spearmint Oil and Menthone manufactured by Sharp Menthol were also exempted from payment of central excise duty.

6. Sharp Menthol substantially exported final products out of India under claim of rebate or under Bond/LUT in terms of rule 19 of the Central Excise Rules, 2002.<sup>4</sup> Some quantity of the final products were cleared for home consumption without payment of duty by reason of exemption.

7. Sharp Menthol claimed that it was maintaining separate records of the inputs used for manufacture of dutiable and exempted final products in terms of rule 6 of the 2004 Credit Rules.

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**2** the Exemption Notification  
**3** the 2004 Credit Rules  
**4** the 2002 Rules

8. As on 01.03.2008, Sharp Menthol had a balance of CENVAT credit of Rs. 6,52,10,065/-, as disclosed in the ER-1 return filed for March 2008.

9. After an inquiry regarding the reversal of the CENVAT credit lying in balance as on 01.03.2008 and on proportionate reversal under rule 6 of the 2004 Credit Rules, Sharp Menthol was issued three show cause notices proposing to demand an amount equal to duty credit lying in the balance as on 01.03.2008 and an amount equal to reversal to be made under rule 6 of the 2004 Credit Rules.

10. The Principal Commissioner adjudicated all the three show cause notices by a common order dated 25.10.2021 and dropped the proceedings initiated against Sharp Menthol.

11. The first show cause notice dated 03.04.2009 called upon Sharp Menthol to show cause as to why

**(i) Rs. 6,52,10,065/-** should not be recovered being opening **balance as on 01.03.2008** from them under rule 14 of the 2004 Credit Rules read with section 11A of the Central Excise Act, 1944 for the violation of rule 11(3) of the 2004 Credit Rules.

**(ii) Rs. 2,02,54,750/-** should not be recovered from them, being an amount of **10% of the value of exempted goods cleared in domestic market during the period from July, 2008 to February, 2009** under rule 14 of the 2004 Credit Rules read with section 11A of the Central Excise Act, 1944.

**(iii) Rs. 4,32,06,768/-** should not be recovered from them being an amount of **10% of the value of exempted goods cleared for export during the period from March, 2008 to February, 2009** under rule 14 of the 2004 Credit Rules read with section 11A of the Central Excise Act, 1944.

**(iv)** Interest as applicable on the amount of Rs. 12,86,71,583/- (Rs. 6,52,10,065/- + Rs. 2,02,54,750/- + Rs. 4,32,06,768/-) referred as above should not be demanded from them under

section 11AB of the Central Excise Act, 1944 read with rule 14 of the 2004 Credit Rules.

**(v)** Penalty should not be imposed upon them under rule 15 of the 2004 Credit Rules read with section 11AC of the Central Excise Act, 1944.

**(emphasis supplied)**

12. The second show cause notice dated 06.04.2010 called upon Sharp Menthol to show cause as to why:

**(i) Rs. 3,00,85,834/-** should not be recovered from them, being an amount of 10% (up to 07.07.2009) & **5%** (from 08.07.2009) **of the value of exempted goods cleared in domestic market during the period from March, 2009** to December, 2009 under rule 14 of the 2004 Credit Rules read with rule 6(3) of the 2004 Credit Rules and section 11A of the Central Excise Act, 1944.

**(ii) Rs. 1,85,55,038/-** should not be recovered from them being an amount of 10% (upto 07.07.2009) & 5% (from 08.07.2009) of the **value of exempted goods cleared for export during the period from March 2009 to December 2009** under rule 14 of the 2004 Credit Rules read with rule 6(3) of the 2004 Credit Rules and section 11A of the Central Excise Act, 1944.

**(iii)** Interest as applicable on the amount Rs. 4,86,40,872/- (Rs. 300858341/- + Rs. 18555038/-) referred as above should not be demanded from them under section 11AB of the Central Excise Act, 1944 read with rule 14 of the 2004 Credit Rules.

**(iv)** Penalty should not be imposed upon them under rule 15 of the 2004 Credit Rules.

**(emphasis supplied)**

13. The third show cause notice dated 01.02.2011 called upon Sharp Menthol to show cause as to why:

**(i) Rs. 2,94,34,941/-** should not be recovered from them, being an amount of **5%** **of the value of exempted goods cleared in domestic market during the period from January, 2010 to September, 2010** under rule 14 of the 2004 Credit Rules read with rule 6(3) of

the 2004 Credit Rules and section 11A of the Central Excise Act, 1944.

**(ii) Rs. 2,21,04,852/-** should not be recovered from them being an amount of **5% of the value of exempted goods cleared for export during the period from January, 2010 to September, 2010** under rule 14 of the 2004 Credit Rules read with rule 6(3) of the 2004 Credit Rules and section 11A of the Central Excise Act, 1944.

**(iii)** Interest as applicable on the amount Rs. 5,15,39,793/- (Rs. 2,94,34,941/- + Rs. 2,21,04,852/-). referred as above should not be demanded from them under section 11AB of the Central Excise Act, 1944 read with rule 14 of the 2004 Credit Rules.

**(iv)** Penalty should not be imposed upon them under Rule 15(2) of Cenvat credit Rules 2004)

**(emphasis supplied)**

14. The three issues raised in the show cause notices are:

**(i)** Recovery of an amount shown as pending balance on 01.03.2008 for violation of rule 11(3) of the 2004 Credit Rules;

**(ii)** Recovery of 10% of the value of exempted goods cleared in the domestic market under rule 14 of the 2004 Credit Rules; and

**(iii)** Recovery of 10% of the value of exempted goods cleared for export under rule 14 of the 2004 Credit Rules.

15. It is seen from the aforesaid three show cause notices that the amount involved in the aforesaid three issues are:

S.No.	SCN date	Period	Amounts involved (Rs)			Total
			Issue (i)	Issue (ii)	Issue (iii)	
1	03.04.2009	Mar 08 - Feb 09	6,52,10,065	2,02,54,750	4,32,06,768	12,86,71,583
2	06.04.2010	Mar 09 - Dec 09		3,00,85,834	1,85,55,038	4,86,40,872
3	01.02.2011	Jan 10 - Sept 10		2,94,34,941	2,21,04,852	5,15,39,793
<b>TOTAL</b>			<b>6,52,10,065</b>	<b>7,97,75,525</b>	<b>8,38,66,658</b>	<b>22,88,52,248</b>

16. Sharp Menthol filed detailed replies to the three show cause notices and denied the allegations made therein. Sharp Menthol pointed out that it had maintained separate records for dutiable

goods and exempted goods and had not taken any CENVAT credit on any inputs used in the manufacture of the exempted goods cleared for domestic areas. It also contended that the show cause notices should be dropped because in the own case of Sharp Menthol in respect of the Delhi Unit, under identical facts and circumstances, proceedings initiated by the three show cause notices were dropped by order dated 31.08.2009. The said order dated 31.08.2009 passed by the adjudicating authority was challenged by the department before the Tribunal, which appeal was dismissed by order dated 27.11.2014 in **Commissioner of Central Excise, Delhi-I vs. Sharp Menthol (India) Ltd.**<sup>5</sup> and the department did not file any appeal against this order.

17. The Principal Commissioner, by order dated 25.10.2021, dropped the proceedings initiated by the three show cause notices.

18. The issues to be decided were noticed by the Principal Commissioner in paragraph 27 of the order, which is reproduced below:

“**27.** The issue to be decided in the instant case is whether, in the facts and circumstances of the instant case, the noticee is entitled to avail CENVAT on inputs namely Menthol exempted w.e.f. 01.03.2008, Dementholised Oil and whether they are required to pay an amt equal to 10% of the value of exempted goods cleared in domestic market during the period July, 2008 to Sept, 2010 and for the exempted goods cleared for export during the same period under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944.”

19. The Principal Commissioner then noticed that similar show cause notices were issued by Commissioner of Central Excise, Delhi to Sharp Menthol and the demands raised in these show cause notices were dropped by order dated 31.08.2009. The Principal

Commissioner also noticed that the appeal filed by the department before the Tribunal against the order dated 31.08.2009 was dismissed on 27.11.2014.

20. The Principal Commissioner also noticed that proceedings in respect of the three show cause notices involved in the present appeal were transferred to a call book and after the decision of the Tribunal on 27.11.2014, which decision was accepted by the competent authority on 11.06.2015, the matter was taken up for adjudication.

21. After reproducing the relevant portions of the order passed by the Tribunal on 27.11.2014 and the decision of the Bombay High Court in **Repro India Ltd vs Union of India**<sup>6</sup>, the Principal Commissioner observed:

**"35. I find that issue of availability of CENVAT credit on inputs namely Mentho (Chapter Heading 29061100, exempted w.e.f 01.03.2008), Dementholised Oil Chapter Heading 33012590) for the period shown in column (4) of the Table-I above has already been settled by the Hon'ble CESTAT vide its Final Order No. A/54515-54516/2014-EX (DB) dated 27.11.2014 (based on the decisions of the Hon'ble Bombay High Court as narrated above) and the same was accepted by the Competent Authority on 11.06.2015 as informed by the Deputy Commissioner (Review), Central Excise Commissionerate, Delhi- vide letter dated 06.05.2016.** I also find that the SLP filed by the department against the order of the Hon'ble Bombay High Court has been dismissed by the Hon'ble Supreme Court vide order dated 04.04.2012 which incidentally, has also been accepted by the department. As such, I find that no further ambiguity in the interpretation of the statute remains.

**36.** In view of the germane construct of the statute by the Hon'ble High Court on various

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6. 2009 (2356) E.L.T.614(Bom.)

occasions and later by the CESTAT on identical grounds for the same assessee, I find no reason to digress from the findings mentioned thereunder. **Since issue has already been settled by Hon'ble CESTAT, New Delhi, I find that the noticee is entitled to avail CENVAT Credit on inputs namely Menthol (Chapter Heading 29061100, exempted w.e.f. 01.03.2008), Dementholised Oil (Chapter Heading 33012590). Since they correctly availed of the CENVAT Credit Rules, 2004 and utilized the same for payment of Central Excise Duty on finished goods, I find that the demands raised under the referred Show cause Notices as mentioned in the Table above do not survive.**

**37. I also find that it is a settled principle of law that in cases where the original demand is not sustainable, question of recovery of interest and consequential penalty does not arise on the assessee."**

**(emphasis supplied)**

22. Shri Bhagwat Dayal, learned authorised representative appearing for the department assailed the impugned order passed by the Principal Commissioner and made the following submissions:

**(i)** The issues raised in the present three show cause notices are not covered by the earlier decision dated 27.11.2004 of the Tribunal in **Sharp Menthol** and each issue was required to be examined and analysed in respect of the allegations raised in the show cause notices;

**(ii)** Elaborating this submission, learned authorised representative pointed out that the Tribunal in **Sharp Menthol** had examined a case where both dutiable final product and exempted final product were not cleared in domestic market;

**(iii)** In **Repro India**, the Bombay High Court held that where exempted final products are cleared for home consumption and the assessee takes credit of duty paid on common inputs in the manufacture of dutiable as well as exempted final products, the

assessee is liable to pay an amount in accordance with rule 6(3) of the 2004 Credit Rules;

**(iv)** From a harmonious reading of rule 11(3) of the 2004 Credit Rules and Explanation 1 that was inserted with effect from 01.02.2008 to rule 6, it is seen that in cases where a manufacturer is manufacturing more than one final product and one product is exempted, he would not be eligible under rule 6(2) for first clearance of exempted goods if the manufacturer does not follow rule 11(3) and in such cases he would have to pay 10%/5% of the value of the exempted goods on its clearance and during the remaining financial year he cannot withdraw this option once exercised.

**(v)** In the absence of details/bifurcation with regard to the credit of inputs which is common/used exclusively for production of exempted goods, the show cause notice for reversal of CENVAT credit of Rs. 6,52,10,065/- was correctly issued for the month of March, 2008 for recovery in terms of rule 11(3) of the 2004 Credit Rules;

**(vi)** Demand of Rs. 2,02,54,750/- for the period July 2008 to February 2009 is sustainable as an option exercised under rule 6(3)(i) of the 2004 Credit Rules cannot be withdrawn during the remaining part of the financial year July 2008 to February 2009; and

**(vii)** The reversal of an amount equal to 10%/5% of the value exempted final products exported under bond as per rule 6(3) of the 2004 Credit Rules is justified.

23. Shri Mihir Mehta, learned counsel for the respondent Sharp Menthol, however supported the impugned order and made the following submissions:

**(i)** Rule 11(3) of the 2004 Credit Rules does not apply in a case when out of common inputs, more than one final product is manufactured and some final products have become exempt while

others remain dutiable. The credit lying in balance as on 01.03.2008 will, therefore, not lapse. In support of this contention, learned counsel placed reliance on the decision of the Tribunal rendered on 31.08.2009 in the matter of **Sharp Menthol** itself.

**(ii)** The Principal Commissioner correctly dropped the demand of an amount equal to 10%/5% of the value of the exempted final products cleared to domestic area in terms of rule 6(3) of the 2004 Credit Rules;

**(iii)** The contention of Sharp Menthol that it had not availed CENVAT credit on inputs used in the manufacture of exempted goods cleared to domestic area stands confirmed by letter dated 22.10.2008;

**(iv)** In any case, option under rule 6(3) of the 2004 Credit Rules is with the assessee and the department cannot demand 10%/5% of the value of the exempted goods as Sharp Menthol did not exercise any option under rule 6(3) of the 2004 Credit Rules;

**(v)** The dropping of demand of an amount equal to 10%/5% of the value of exempted final products exported in terms of rule 6(3) of the 2004 Credit Rules is justified;

**(vi)** The department is in appeal only for an amount of Rs. 1,08,16,320/- pertaining to the period 26.05.2010 to 30.09.2010 which is for the period when Notification No. 42/2001-C.E. dated 26.06.2001 was amended by Notification No. 24/2010-C.E. dated 36.05.2010. The show cause notice did not allege that since the Notification was amended on 26.05.2010, and specific condition was inserted in the main Notification, it did not permit export of exempted goods under bond;

**(vii)** Undisputedly, the export has been allowed under bond by the department itself and orders allowing export under bond have not been reviewed under section 35E of the Central Excise Act and/or

appealed against. Thus, the reversal of the CENVAT credit under rule 6(3) of the 2004 Credit Rules is not tenable in the present case; and **(viii)** Once the exports under bond are allowed by the department without any challenge to the same, the provisions of rule 6(6)(v) of the 2004 Credit Rules shall apply to the present case.

24. The submissions advanced by the learned authorised representative appearing for the department and the learned counsel for the respondent have been considered.

### **FIRST ISSUE**

25. The first issue that needs to be decided is regarding lapsing of credit lying in balance as on 01.03.2008 in terms of rule 11(3) of the 2004 Credit Rules.

26. To appreciate this issue, it would be appropriate to first reproduce rule 11(3) of the 2004 Credit Rules and it is as follows:

**“11(3)** A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-

- (i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or
- (ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.”

27. The show cause notice proposes recovery of an amount of Rs. 6,52,10,065/- shown as pending balance as on 01.03.2008 for

violation of rule 11(3) of the 2004 Credit Rules. There is no proposal to demand CENVAT credit attributable to the quantity of inputs in stock or in process or contained in the final product lying in stock.

28. The contention of the department is that the decision of the Tribunal in **Sharp Menthol** deals with a part of the issue concerning utilization of balance of credit, but the dispute here also involves another aspect regarding requirement of payment of an amount equal to the credit taken, which is attributable to the inputs received for use in the manufacture of the final product and is lying in stock as such or in process or is contained in the final product lying in stock. This contention is beyond the allegations made in the show cause notice as such a case is not even made out in the show cause notice.

29. The contention of the learned counsel for Sharp Menthol is that rule 11(3) of the 2004 Credit Rules is applicable when only a single final product becomes exempted and that rule 11(3) does not apply in cases when out of common inputs, more than one final product is manufactured and some final products become exempted, while others remain dutiable. In this connection, learned counsel placed the letter dated 22.07.2018 by which Sharp Menthol specifically pointed out that it had not taken any CENVAT credit on the inputs used exclusively for manufacture of goods cleared for home consumption and, therefore, no question of reversal of any amount on removal of exempted goods for home consumptions arises.

30. It needs to be noted that from the common inputs Sharp Menthol was manufacturing dutiable goods namely peppermint oil (redistill blend) and peppermint oil (rectified) and exempted products namely Menthol Crystal and Menthol.

31. Rule 3(4) of the 2004 Credit Rule provides that CENVAT credit may be utilised for payment of any duty of excise on any final

product. This means that if out of the same CENVAT credit availed inputs, more than one final product is manufactured and out of those final products, one is exempted from duty, CENVAT credit can be utilised for payment of duty for the other final products which are dutiable.

32. This issue was examined by this Tribunal in **Sharp Menthol** and the relevant paragraphs of the decision are reproduced below:

“**8.1** Coming to the first issue, sub-rule (3) of the Rule 11 of Cenvat Credit Rules, 2004 is reproduced below: xxx

**8.1.1** From a plain reading of the above sub-rule, it is clear that this rule applies, if-(a) one or more duty paid inputs in respect of which Cenvat credit has been taken, have been used in or in relation to manufacture of a final product which up to a certain date was dutiable; and (b) that final product has become fully exempt from duty whether on option basis or absolutely from a particular date. xxx **From the language of this rule, it is clear that this sub-rule is applicable only when one or more Cenvat credit availed inputs or input services have been used in or in relation to manufacture of a final product which has become fully exempted under a notification issued under Section 5A(1) of the Central Excise Act.** if the words “the said final product” are taken to include its plural, then also for application of this rule, it would be necessary that all the final products become fully exempt from duty. **This rule would have no application if from common Cenvat credit availed inputs or input services more than one final product are manufactured products have remained dutiable. In such a situation, the credit in balance can still be utilised for payment or duty on the final products which have continued to be dutiable, as in terms of Rule 3(4)(a) of the Cenvat Credit Rules, 2004. Cenvat credit can be utilised for payment of excise duty on any final product and, Section 11(3) cannot be given an interpretation which is in conflict**

**with the provisions of Rule 3(4).** Therefore, on this point, we agree with the finding of the learned Commissioner that Rule 11(3) does not apply to this case.”

**(emphasis supplied)**

33. Thus, the CENVAT credit balance as on 01.03.2008 shall not lapse under rule 11(3) of the 2004 Credit Rules. The Principal Commissioner, therefore, did not commit any illegality in dropping the demand.

### **SECOND ISSUE**

34. The second issue relates to demand of an amount equal to 10%/5% of the value of exempted final products cleared to domestic area in terms of rule 6(3) of the 2004 Credit Rules.

35. The show cause notice proposed to recover an amount equal to 10% (upto 07.07.2009) and 5% (with effect from 08.07.2009) of the value of exempted products cleared to domestic area under rule 6(3) of the 2004 Credit Rules.

36. Sharp Menthol was maintaining separate accounts for dutiable goods and exempted goods and had not taken CENVAT credit on any inputs used in the manufacture of exempted final products cleared for domestic market. In fact, Sharp Menthol, after March 2008, had not taken credit on exempted input, i.e. menthol, which was used exclusively for manufacture of exempted goods for domestic clearance.

37. The Principal Commissioner has placed reliance upon the decision of the Bombay High Court in **Repro India**.

38. Option under rule 6(3) of the 2004 Credit Rules is with the assessee and the department cannot demand 10%/5% of the value of the exempted goods. Sharp Menthol had not exercised any one of the options under rule 6(3) of the 2004 Credit Rules. There is no proposal in the show cause notice to recover the credit alleged to

have been taken by Sharp Menthol of the inputs or input services used in the manufacture of exempted goods.

39. In this connection reference can be made to the decision of the Telangana High Court in **Tiara Advertising vs Union of India**<sup>7</sup>. It was held:

**"14. Further, we may reiterate that Rule 6(3) of the Cenvat Credit Rules, 2004, merely offers options to an output service provider who does not maintain separate accounts in relation to receipt, consumption and inventory of inputs/input services used for provision of output services which are chargeable to duty/ tax as well as exempted services. If such options are not exercised by the service provider, the provision does not contemplate that the Service Tax authorities can choose one of the options on behalf of the service provider.** As rightly pointed out by Sri S. Ravi, Learned Senior Counsel, if the petitioner did not abide by the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, it was open to the authorities to reject its claim as regards the disputed Cenvat Credit of Rs. 17,15,489/-.

**15. We may also note that in the event the petitioner was found to have availed Cenvat Credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilised wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The**

statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-in-Original, to the extent that it proceeded on these lines, therefore cannot be countenanced."

**(emphasis supplied)**

40. This Tribunal in **Agarwal Metal Works Pvt. Ltd. vs. Commissioner of CGST, Alwar**<sup>8</sup> also held as follows:

"14. Thus, the demand of an amount under Rule 6(3) of CCR cannot be sustained even if the appellant was redering exempted services and had taken Cenvat credit on common inputs/input services. The impugned order, therefore, cannot be sustained and is liable to set aside."

41. There is, therefore, no error in the order passed by the Principal Commissioner dropping the demand raised on this issue.

42. There is no allegation in the show cause notice or in the grounds of appeal that since Sharp Menthol paid 10% of the turnover of exempted goods cleared for home consumption, it should be considered that it had exercised an option which would have to be followed for all the months of that year. It is, therefore, not open to the learned authorised representative of the department to raise this issue at the time of hearing of the appeal.

43. Sharp Menthol took re-credit of the amount equal to 10% of the value of exempted goods paid by them by mistake on the exempted goods cleared for home consumption in the months March to June 2008, in the subsequent months. The department did not object to the re-credit of the said amount, perhaps because Sharp Menthol had maintained separate accounts and had not exercised the option under rule 6(3) of the 2004 Credit Rules

44. Having permitted Sharp Menthol to take recredit of the said amount, it is not open to department to now contend that Shjarp

Menthol had exercised the option under rule 6(3) of the 2004 Credit Rules and was, therefore, bound to pay amount equal to 10% of the value of exempted goods cleared for home consumption for the rest of the year.

45. Sharp Menthol has also pointed out that due to prevalent ambiguity and basis advice, inspite of maintenance of separate accounts, it had deposited 10% of the turnover of the exempted goods cleared for home consumption for the months of March to June 2008. It had not paid the said 10% of the exempted turnover for any other month during the period under dispute.

46. Merely because out of abundant caution, Sharp Menthol had deposited 10% of the value of exempted turnover for a few months, it cannot be made the basis to allege that it had exercised the option to pay 10% of the exempted turnover and hence, cannot change the same for the entire year.

### **THIRD ISSUE**

47. This issue relates to demand of an amount 10%/5% of the value of exempted final products exported under rule 6(3) of the 2004 Credit Rules.

48. It needs to be noted that though the three show cause notices, have demanded an amount of Rs. 8,38,66,658/- under this head as the amount equal to 10%of the exempted final product cleared for export under bond in terms of rule 6 of the 2004 Credit Rules, but this appeal filed by the department is restricted to Rs. 1,08,16,320/- which pertains to the period from 26.05.2010 to 30.09.2010, which is for the period when Notification No. 42/2001-C.E. dated 26.06.2001 was amended by Norification No. 24/2010-C.E. dated 26.05.2010.

49. What needs to be noticed is that the show cause notice did not allege that since the Notification dated 26.06.2001 was amended by

Notification dated 26.05.2010 and a specific condition was inserted in the main Notification in not permitting the export of exempted or nil rated goods under bond. It is, therefore, not open to the department to raise this issue in this appeal.

50. In view of the provisions of rule 6(6)(v) of the 2004 Credit Rules, the provisions of rule 6(3) would not be applicable for goods exported under the bond.

51. In this connection , reference can be made to the decision of the Bombay High Court in **Repro India**. The relevant paragraphs of the decision are reproduced below:

"7. It would thus appear that the direction of the respondent No. 2 to the petitioners to pay 10% even though printed books were exported is not legally sustainable. It is only in the event the petitioners does not export the printed goods and do not maintain the account contemplated by rule 6(2) the petitioner would be required to pay 10% of the sale price of the printed books not so exported. Even though rule 6(1) of the Cenvat credit Rules, 2004 provides that no credit will be available in respect of inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat credit rules creates an exemption inter alia in respect of excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2002. Considering the language of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 the petitioners are entitled to avail Cenvat credit in respect of the inputs used in the manufacture of final products being exported irrespective of the fact that the final products are otherwise exempt.

8. ....This appears to be the object behind the government enacting special scheme to ensure that the duty is not levied even on inputs going to the export products. Rule 6(6)(v) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied even on inputs going to export products. This method of adjustment, both from the point of Government and the assessee is to allow the

assessee to take Cenvat credit on the inputs used in the export products and allow the assessee himself to adjust it for the payment of duty on the other products. If the adjustment is not possible Cenvat credit is refunded in cash. This appears to be scheme of Rule 5 of Cenvat Credit Rules, 2004. With a view to achieve this object, the Central Government has specifically enacted rule 6(6)(v) of the Cenvat Credit Rules, 2004 to the effect that the bar created by Rule 6(1) will not apply for the goods exported. Considering the conscious and express provisions contained in Rule 6(6)(v) for exported goods, to deny the permission to export under the bond and / or to levy 10% on the value of exported goods under Rule 6(3)(b) on the footing that the printed books exempt and, therefore, attract Rule 6(1) would be incorrect and completely nullify and frustrate Rule 6(6)(v).

9. The minor changes in the wordings of Rule 6(6) of the Cenvat Credit Rules, 2004, by using the term "excisable goods" instead of exempted goods is that the term 'exempted goods' may not cover dutiable goods which are exported under bond. Therefore to widen and cover both dutiable goods and exempted goods exported under bond, Rule 6(6) of the Cenvat Credit Rules, 2004 uses the expression "excisable goods".

52. In the matter of the respondent in **Union of India vs. Sharp Menthol India Ltd<sup>9</sup>**, the Bombay High Court also observed as follows:

"27. The argument of the Revenue that in the present case, the credit of duty paid on menthol is not allowable or has lapsed for the reason that the duty paid menthol has been used in the manufacture of exempted menthol crystals cannot be accepted, because, admittedly the exempted menthol crystals have not been cleared for home consumption but have been cleared for export under bond and, therefore, Rule 6(1) to 6(4) of 2004 Rules would not apply, but Rule 6(6)(v) would apply. In other words, non allowability of input credit under Rule 6(1) to 6(4) of 2004 Rules

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9. 2011(270)E.L.T.2012(Bom.)

is applicable only when the inputs used in the manufacture of exempted final products are cleared for home consumption without payment of duty and not when exempted final products are cleared for export without payment of duty under bond. In the present case, exempted menthol crystals has been exported without payment of duty under bond and, therefore, the assessee was entitled to take the credit of duty paid on menthol used in the manufacture of exempted menthol and utilize that credit for paying duty on clearance of peppermint oil. Since peppermint oil was exported on payment of duty, the assessee was entitled to claim rebate of duty paid on exported peppermint oil under Rule 18 of the Central Excise Rules, 2002.

**28.** In the result, we hold that in the facts of the present case, since the exempted menthol crystals as well as dutiable peppermint oil manufactured out of duty paid menthol have been exported by the assessee, the provisions of Rule 6(1) to 6(4) of the 2004 Rules are not applicable and as per Rule 5 of 2004 Rules, the assessee was entitled to avail the Cenvat credit of duty paid on menthol used in the manufacture of exempted menthol crystals and utilize the said credit for payment of duty on clearance of peppermint oil either for home consumption or for export. In the present case, since the peppermint oil has been exported on payment of duty, the assessee was entitled to claim rebate of the duty paid on peppermint oil.”

53. The Special Leave Petition filed by the department against the aforesaid order of the Bombay High Court was dismissed by the Supreme Court on 04.04.2012

54. Even otherwise, all the exports made by Sharp Menthol were under bond and were allowed by proper officer by counter-signing and endorsing ARE certificates which clearly mention that the exports are under a bond and this was accepted by the Assistant Commissioner. The department did not file any appeal against the

orders and, therefore, reversal of CENVAT credit under rule 6(3) of the 2004 Credit Rules is not justified.

55. The Principal Commissioner was, therefore, justified in dropping the demand.

56. There is, therefore, no merit in the three appeals. They are, accordingly, dismissed.

(Order pronounced on **05.06.2026**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

Apoorva

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**EXCISE APPEAL No. 51552 of 2022**

(Arising out of Order-in-Original No. ALW-EXCUS-000-COM-029-031-21-22 dated 25.10.2021 passed by the Principal Commissioner of CGST & CX Alwar)

**The Principal Commissioner of CGST & CX, Alwar ....Appellant**  
a-Block, Surya Nagar,  
Alwar, Rajasthan-301001

Versus

**M/s Sharp Menthol India Ltd.**  
F-76-C & D,  
RIICO Industrial Area, Bhiwadi, Alwar

**....Respondent**

**WITH**

**E/51586 of 2022 and E/51587/2022**

**APPEARANCE:**

Shri Bhagwat Dayal, authorised representative for the department  
Shri Mihir Mehta, advocate for the respondent

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing : 18.05.2026

Date of Decision : 05.06.2026

**ORDER SHEET**

Order pronounced.

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(P . V. SUBBA RAO)  
MEMBER (TECHNICAL)**

Apoorva