IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal Nos. 41695 and 41696 of 2016

(Arising out of Orders in Appeal No. 225 & 226/2016 (CXA – II) dated 24.6.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

Lotte India Corporation Ltd. **Appellant**
Nellikuppam, Cuddalore – 607 105.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri S. Satishchandrasekaran, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41021-41022/2026

Date of Hearing : 31.07.2026
Date of Decision: 16.09.2026

This appeal is filed by the appellant against Orders in Appeal No. 225 & 226/2016 (CXA – II) dated 24.6.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai.

Brief Facts

2. The brief facts are that the appellant is engaged in the manufacture of sugar confectionery falling under Chapters 17 and 18 of the CETA, 1985. It also manufactures 'processed milk', falling under Chapter Heading 0402, which is either captively consumed in the manufacture of sugar confectionery or supplied to its sub-contractors for further use. Processed milk was exempt from duty under Notification No.03/2006-CE dated 01.03.2006 and was accordingly

treated as exempted goods for the purposes of Rule 6 of the CENVAT Credit Rules, 2004. On verification of records, it appeared that the appellant had availed common input service credit for the manufacture of both dutiable and exempted goods without maintaining separate accounts. Accordingly, the provisions of Rule 6 were invoked and a Show Cause Notice dated 04.04.2014 was issued proposing recovery of Rs.4,17,126/- for March 2013, along with penalty. For the period April 2013 to March 2014, although the appellant had reversed CENVAT credit under Rule 6(3A), the Department alleged the reversal to be deficient and issued further Show Cause Notices dated 02.05.2014 and 05.02.2014 proposing recovery of Rs.6,60,643/- along with penalty. The demands and penalties were confirmed by the adjudicating authority and upheld by the Commissioner (Appeals). Hence, the present appeals.

3. The ld. Counsel Shri S. Satishchandrasekaran appeared for the appellant and Shri M. Selvakumar, ld. Authorized Representative appeared for the department.

Submissions made by the Appellant

3.1 Shri S. Satishchandrasekaran the ld. Counsel for the appellant submitted that

A. ‘Processed Milk’ cannot be treated as an exempted final product for the purposes of Rule 6 of the CENVAT Credit Rules, 2004. The same is not cleared or sold as such but is either captively consumed in the manufacture of sugar boiled confectionery or sent to job workers for such manufacture. Rule 6 applies where a manufacturer manufactures both dutiable and exempted final products and, therefore, the demand itself is not sustainable.

B. Without prejudice, even if 'Processed Milk' is treated as an exempted final product, the appellant had already reversed CENVAT credit under Rule 6(3A). If such reversal was found to be short or not strictly in accordance with the prescribed formula, the Department could at best recover the differential amount of credit required to be reversed. There is no legal basis for demanding 6% of the value of the exempted goods. Non-maintenance of separate accounts for common input services, by itself, cannot justify such demand, particularly when the appellant had substantially complied with the reversal mechanism under Rule 6(3A). The adjudicating authority has also failed to consider the credit already reversed or quantify any alleged short reversal with reference to the prescribed formula. The demand of 6% is therefore unsustainable.

C. The extended period is not invocable, as the appellant had in fact reversed credit and the dispute concerns the manner of computation of such reversal. There was no suppression of facts or intent to evade payment of duty. Consequently, the demand of interest and penalties is also unsustainable. The appropriation of Rs.88,524/- is likewise liable to be set aside.

The ld. Counsel prayed that the impugned order may therefore be set aside and the appeals allowed.

Submissions made by the Respondent – Revenue

3.2 Shri M. Selvakumar, ld. Authorized Representative submitted on behalf of Revenue that:

A. The processed Milk was an exempted final product. It was fully manufactured, classifiable under Heading 0406, and exempt under Notification No. 03/2006-CE dated 01.03.2006. Captive consumption in confectionery or clearance to job workers did not alter its character as a final product.

B. Common input services were used for both dutiable and exempted goods hence Rule 6 applied. However, the Appellant failed to maintain separate accounts under Rule 6(2). Hence under Rule 6(3), it had to pay either 6% of the value of exempted goods or the amount determined under Rule 6(3A).

C. The Appellant initially neither paid 6% nor exercised the Rule 6(3A) option. Its claim that reversal of common input-service credit was sufficient was unsupported by evidence. The amount under Rule 6(3), together with interest, was therefore payable.

The ld. A.R. prayed that the Appeal may be rejected.

Discussion and Analysis

4. Heard the rival parties and carefully perused the appeals.

5. The preliminary issue for consideration is whether "Processed Milk" can be regarded as an exempted final product for the purposes of Rule 6 of the CENVAT Credit Rules, 2004. It is not in dispute that the said product is neither cleared nor sold as such. It arises at an intermediate stage and is either captively consumed in the manufacture of sugar-boiled confectionery or sent to job workers for use in such manufacture.

6. According to the appellant, fresh milk received in tankers is evaporated until it attains 70–74° Brix, where after sugar is added to improve shelf life. Fresh milk and sugar are the principal ingredients; no CENVAT credit is availed thereon, and separate accounts are maintained in respect thereof.

7. Rules 3 and 6 of the CENVAT Credit Rules, 2004 must be read harmoniously. Credit of duty paid on inputs is admissible when such

inputs are used in or in relation to the manufacture of the final product. Rule 6 is attracted where common inputs or input services are used in the manufacture of dutiable and exempted final products. An intermediate activity which does not amount to manufacture cannot, merely by reason of that circumstance, result in the emergence of an "exempted final product". Equally, an intermediate product captively consumed in, or sent to a job worker for, the manufacture of the dutiable final product cannot be equated with an exempted final product independently cleared from the factory.

8. The **Board, in Circular dated 26.09.2007** issued from F. No.93/1/2005-CX.3, clarified that where a process does not amount to manufacture, no duty is payable and, consequently, credit of the duty paid on inputs used exclusively in such activity is not admissible. The said clarification, however, does not answer the distinct situation where an intermediate product arises in the integrated manufacture of a dutiable final product and is further used in or in relation to such manufacture. Its application must therefore be examined in the context of the entire manufacturing process and not by isolating an intermediate stage.

9. In Collector of **Central Excise Vs Eastend Paper Industries Ltd.,** [1989 (43) E.L.T. 201 (S.C.)], the Hon'ble Supreme Court held that where a process is so integrally connected with the ultimate production of goods that, but for such process, manufacture would be commercially inexpedient, articles required in that process fall within the expression "in the manufacture of goods". The ratio supports consideration of the manufacturing operation as an integrated whole.

10. Further, in **Rallis India Ltd. Vs Union of India** [2009 (233) E.L.T. 301 (Bom.)], as affirmed in **Union of India Vs Hindustan Zinc**

Ltd., [2014 (303) E.L.T. 321 (S.C.)], it was held that a product which emerges unavoidably or as a technological necessity in the course of manufacture of the principal final product is in the nature of a by-product, and the obligation to pay the prescribed amount under Rule 57CC of the erstwhile Central Excise Rules, 1944 or Rule 6 of the CENVAT Credit Rules, 2004 is not attracted merely because such by-product is exempted or cleared at nil rate of duty.

11. **Applying the above principles, "Processed Milk" is only an intermediate product forming an integral part of the continuous manufacture of sugar-boiled confectionery. It is neither manufactured as an independent final product nor cleared as such. Its captive consumption or removal to job workers for further manufacture does not alter its character as an intermediate product. Consequently, it cannot be treated as an exempted final product for invoking Rule 6 of the CENVAT Credit Rules, 2004. The demand founded on the contrary premise is therefore unsustainable and merits to be set aside**.

Conclusion

12. Considering the above, the impugned order is set aside with consequential relief, as per law. The appeals are disposed of accordingly.

(Pronounced in open court on 16.09.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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