CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 51569 OF 2015

(Arising out of Order-in-Original No. JAI-EXCUS-000-COM-78-14-15, dated 22.01.2015 passed by Commissioner of Central Excise, Jaipur)

M/s. Rajasthan Renewable Energy, Corporation Limited ...Appellant
E-166, Yudhisthar Marg, C-Scheme
Jaipur-302005, Rajasthan

versus

Commissioner of Central Excise, ...Respondent
Jaipur

AND

SERVICE TAX APPEAL NO. 52471 OF 2016

(Arising out of Order-in-Original No. JAI-EXCUS-000-COM-03-16-17, dated 20.05.2016 passed by Commissioner of Central Excise, Jaipur)

M/s. Rajasthan Renewable Energy Corporation Limited ...Appellant
E-166, Yudhisthar Marg, C-Scheme
Jaipur-302005, Rajasthan

versus

Commissioner of Central Excise, ...Respondent
Jaipur

APPEARANCE:

Shri B.L. Narasimhan and Shri Shantanu, Advocates for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 01.03.2023
Date of Decision: 10.04.2023

FINAL ORDER NO's. 50437-50438/2023

Justice Dilip Gupta:

Service Tax Appeal No. 51569 of 2015 has been filed by M/s. Rajasthan Renewable Energy Corporation Limited[1] to assail the order dated 22.01.2015 passed by the Commissioner confirming the demand proposed in the show cause notice dated 24.04.2014 under rule 14 of the CENVAT Credit Rules 2004[2] read with proviso to section 73(1) of the Finance Act 1994[3] with penalty for the period October 2008 to June 2013.

2. **Service Tax Appeal No. 52471 of 2016** has been filed by the appellant to assail the order dated 20.05.2016 passed by the Commissioner rejecting the declaration dated 24.12.2013 filed by the appellant under the Service Tax Voluntary Compliance Encouragement Scheme, 2013[4] introduced in Chapter VI of the Finance Act 2013 w.e.f. 10.05.2013.

3. The appellant, a Rajasthan Government undertaking formed by merging the Rajasthan Energy Development Agency and the Rajasthan State Power Corporation Ltd., is a State Nodal Agency for promoting and developing non-conventional energy sources in the State of Rajasthan and is also a State Designated Agency for enforcement of the provisions of the Energy Conservation Act, 2001. The appellant co-ordinates the programme activities regarding non-conventional energy sources and is also engaged in creating awareness among people towards conservation of energy, protection of environment degradation through demonstration projects and

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1. the appellant
2. the Credit Rules
3. the Finance Act
4. the Voluntary 2013 Scheme

other methods. To reduce the dependence on conventional sources of energy by promoting the development of non-conventional energy sources, the appellant works as a nodal agency for promotion and development of renewable energy sources under different policies issued by the Energy Department in the Government of Rajasthan.

4. In September 2013, the Audit team of the Service Tax Department conducted an audit of the appellant and raised multiple demands for recovery of service tax and CENVAT credit. The department sent a letter dated 28.10.2013 to the appellant reiterating the audit objections and advised the appellant to avail the Voluntary 2013 Scheme, which came into effect from 10.05.2013. The appellant filed a declaration in the prescribed forms under the Voluntary 2013 Scheme on 24.12.2013 and declared tax dues of Rs. 1,02,94,726/-. The Designated Authority issued an acknowledgment of receipt of the declaration in terms of section 107(2) of the Voluntary 2013 Scheme read with rule 5 of the Service Tax Voluntary Compliance Encouragement Scheme Rules, 2013[5]. The appellant also deposited tax dues in cash by Challan No. 00611 dated 30.12.2013 and payment of such amount was intimated to the Designated Authority by a letter dated 30.12.2013. The appellant, by a letter dated 10.01.2014, also intimated the department that it had paid service tax amounting to Rs. 1,20,51,557/- (1,00,19,715 by declaration and Rs. 20,31,842 by challans dated 30.12.2013) towards the CENVAT credit wrongly availed as well as certain portion of service tax short-paid. On the remaining issues, the appellant

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5. the Voluntary 2013 Rules

contested the demand raised in the audit objection as being unsustainable and liable to be dropped.

5. However, the department issued a show cause notice dated 24.04.2014, placing reliance on the allegations raised in the Audit report dated 22.10.2013, and raised demands against the appellant though the appellant had filed a declaration for settling the demand relating to CENVAT credit.

6. The appellant submitted a reply to the show cause notice and stated that it had reversed the entire CENVAT credit of Rs. 1,20,51,557/- and thus the issue of wrong availment of CENVAT credit and payment of amount under rule 6(3)(i) of the Credit Rules had become redundant. The appellant also stated that it had paid the appropriate service tax on Annual Accreditation Charges and one time Accreditation Charges and submitted a detailed calculation in that respect. The appellant also pointed out that the amount towards forfeiture of security deposit was not liable to service tax prior to 01.07.2012 under 'business auxiliary service'[6]. The appellant also requested for issuance of Form 3.

7. The appellant, however, received a second show cause notice dated 23.12.2014 alleging the declaration filed by the appellant was 'substantially false' as the tax dues amount during the audit was Rs. 10,56,58,700/- and the appellant only declared Rs. 1,02,94,726/- as tax dues in the declaration. Thus, as the provisions of the Voluntary 2013 Scheme had been contravened, the declaration was liable to be rejected. The show cause notice also sought to recover the amount

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6. BAS

already proposed to be recovered in the earlier show cause notice dated 24.04.2014. The appellant filed a reply dated 31.12.2014.

8. The Commissioner, by order dated 22.01.2015, confirmed the demand proposed in the first show cause notice by invoking the extended period of limitation contemplated under section 73(1) of the Finance Act.

9. The second show cause notice was also adjudicated by the Commissioner by order dated 20.05.2016. As the recovery of amount had already been adjudicated, the Commissioner did not adjudicate upon the same in show cause notice and only examined the validity of the declaration made under the Voluntary 2013 Scheme. The Commissioner rejected the declaration finding it to be 'substantially false'.

10. **Service Tax Appeal No. 51569 of 2015** has been filed to assail the order dated 22.01.2015 passed by the Commissioner and **Service Tax Appeal No. 52471 of 2016** has been filed to assail the order dated 20.05.2016 passed by the Commissioner.

11. The issues involved in Service Tax Appeal No. 51569 of 2015 are:

(i) Whether the appellant is liable to avail CENVAT credit on alleged improper documents on telephone bills, mobile bills etc.;

(ii) Whether the appellant is liable to reverse CENVAT credit used exclusively in the manufacture of electricity;

(iii) Whether the appellant is liable to pay 10%/6%/5% on the value of electricity, as common input services used both for taxable services and exempted goods;

(iv) Whether the appellant is eligible to avail CENVAT credit on certain ineligible input services;

(v) Whether the appellant is liable to pay service tax on annual accreditation charges, one-time accreditation charges and forfeiture of security deposit in relation 'BAS'.

12. The issue involved in Service Tax Appeal No. 52471 of 2016 is:

(i) Whether the appellant has filed a false declaration under the Voluntary 2013 Scheme.

13. Shri B.L. Narasimhan learned counsel for the appellant assisted by Shri Shantanu, made the following submissions:

(i) Once the entire CENVAT credit stands reversed/paid, it amounts to non-availment of CENVAT credit. To support this contention learned counsel for the appellant placed reliance upon the judgment of the Supreme Court in **Chandrapur Magnets Pvt. Ltd.** vs. **CCE**[7]**,** which was subsequently followed in**:**

(a) **Commissioner of Central Excise & Customs** vs. **Precot Meridian Ltd.**[8]**;**

(b) **M/s. Beekay Engineering Corporation** vs. **C.C.E., Raipur**[9]**;**

(c) **Commissioner of Central Excise** vs. **Ashima Dyecot Ltd.**[10] **and**

(d) **Hello Minerals Water (P) Ltd.** vs. **Union of India**[11]**;**

(ii) The provisions of rule 6 of the CENVAT Rules are not applicable to the present case and, therefore, the demand of Rs. 9,42,56,387 is not sustainable. In this

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7. 1996 (81) E.L.T. 3 (S.C.)
8. 2015 (325) E.L.T. 234 (S.C.)
9. 2017 (11) TMI 1468-CESTAT New Delhi
10. 2008 (12) S.T.R. 701 (Guj.)
11. 2004 (174) E.L.T. 422 (All.)

connection, learned counsel has placed reliance upon the decision of the Tribunal in **Star Agriwarehousing & Collateral Management Ltd.** vs. **Commissioner of C. Ex. & S. T., Jaipur**[12];

(iii) Electricity is not an 'exempted' and 'excisable' good;

(iv) The appellant had discharged the service tax liability in accordance with the applicable legal provisions and there was no short-payment thereof; and

(v) The extended period was not invokable and interest was not recoverable nor penalty was imposable.

14. Shri Rajeev Kapoor, learned authorized representative appearing for the Department supported the impugned order passed by the Commissioner.

15. Learned counsel for the appellant very fairly stated that if Service Tax Appeal No. 51569 of 2015 succeeds, then Service Tax Appeal No. 52471 of 2016 relating to the validity of the declaration would be rendered infructuous.

16. It would, therefore, be useful to first examine the submissions made in **Service Tax Appeal No. 51569 of 2015** that has been filed to assail the order dated 22.01.2015 passed by the Commissioner confirming the demand proposed in the show cause notice dated 24.04.2014.

17. The first contention advanced by the learned counsel for the appellant is that as the entire CENVAT credit availed by the appellant stood reversed, it would amount to non availment of CENVAT credit. It needs to be noted that the appellant had through three challans

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12. 2021 (44) G.S.T.L. 271 (Tri.- Del.)

paid in cash the amount of CENVAT credit earlier availed by it. The Supreme Court in **Chandrapur Magnets Pvt. Ltd** held that if the credit has been reversed after availing the same, it would mean that credit had not been availed at all. This decision of the Supreme Court was followed in **Precot Meridian Ltd., Ashima Dyecot Ltd., Hello Minerals Water (P) Ltd.** and **Beekay Engineering Corporation Ltd.** Since **Beekay Engineering Corporation** is the last of the aforesaid decisions, the relevant paragraph of the decision is reproduced below:

> "7. xxxxxxxx. Admittedly, the appellants availed credit on input services. That will bar them from availing said abatement. However, reversal of credit already availed will amount to non-availment of credit is the legal principle laid down by the Hon'ble Supreme Court in Chandrapur Magnet Wires (P) Ltd.- 1996 (81) ELT 3 (SC) and in various other decisions of the High Courts and the Tribunal.

18. In view of the aforesaid decisions, it has to be held that when the entire CENVAT credit availed by the appellant had been reversed, it would amount to non availment of CENVAT credit and the demand for recovery of the CENVAT credit cannot be sustained.

19. The second issue that arises for consideration is regarding the applicability of rule 6 of the Credit Rules to the facts of the present case. The impugned order has confirmed the demand of Rs. 9,42,56,387/- on the ground that the appellant was producing electricity, which is an exempted product and, therefore, the appellant could not have availed CENVAT credit on common services as the rigours of rule 6 of the Credit Rules would apply. As noticed above, when CENVAT credit has been reversed it would amount to

non availment of CENVAT credit and, therefore, the confirmation of demand on ground that since the appellant had availed CENVAT credit on services without maintaining separate accounts it would be liable to pay 10%/5%/6% in terms of rule 6(3)(i) of the Credit Rules cannot sustain. The provisions of rule 6(3) of the Credit Rules would apply only when an assessee desires to avail and utilize CENVAT credit pertaining to common input services but as the appellant had reversed the entire CENVAT credit, the options contemplated in rule 6(3) of the Credit Rules would not be applicable. This is what was held by the Tribunal in **Star Agriwarehousing & Collateral Management Ltd**.

20. The third contention advanced by the learned counsel for the appellant is that electricity is not an 'exempted' and 'excisable' good. The demand has been confirmed on the ground that the appellant was manufacturing 'electricity' which is an exempted good and, therefore, should have reversed 10%/6%/5% of the value of exempted goods i.e. electricity as the appellant had failed to follow the other options provided under rule 6 of the Credit Rules. The provisions of rule 6 of the Credit Rules show that the same come into picture only when the credit pertains to inputs or input services used in respect of both excisable and exempted product. In terms of rule 2(d) of the Credit Rules, 'exempted goods' can be categorized into three parts as under:

(i) Excisable goods which are exempted from the whole of the duty of excise leviable thereon;

(ii) Goods which are chargeable to nil rate of duty; and

(iii) Goods in respect of which the benefit of an exempted under Notification No. 1/2011-C.E., dated the 1st of March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed.

21. 'Excisable goods' has been defined in section 2(d) of the Central Excise Act, 1944 to mean goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise. Thus, to be considered as excisable goods, the same must be specified in the First or Second Schedule as being subject to a duty of excise.

22. Chapter Heading 2716 00 00 specifies 'electrical energy', but the same is not subject to any rate of duty, not even 'nil'. The rate of duty in the said Chapter Heading has been left blank and thus, electricity cannot be considered to have been specified in the First Schedule of the Act of 1985 as being subject to a duty of excise. In such a case, it cannot be considered as excisable goods.

23. In this connection, it would be useful to place reliance upon the decision of the Allahabad High Court in **Gularia Chini Mills** vs. **Union of India**[13]. It was held that electrical energy is not an excisable goods nor it is exempted goods as defined in rule 2(d) of the Credit Rules. Thus, as electricity is not excisable goods under section 2(d) of the Central Excise Act, 1944, rule 6 of the Credit Rules would not be applicable.

24. The fourth submission advanced by the learned counsel for the appellant is that the appellant had discharged the service tax liability

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13. 2014 (34) S.T.R. 175 (All.)

in accordance with law and there is no short-payment. In this connection learned counsel pointed out that the impugned order has confirmed the demand of service tax of Rs. 5,38,690/- on Annual Accreditation charges, one time Accreditation charges and forfeiture of security deposit on the ground that the same are covered under the scope of BAS. Out of this amount, an amount of Rs. 2,75,010/- was paid as service tax on the forfeiture charges by the appellant by challan dated 30.12.2013.

25. In this connection, learned counsel for the appellant pointed out that the appellant had been appointed as the State Nodal agency under various policies of the Rajasthan State Government. The appellant was also appointed as the State Agency by the Rajasthan Electricity Regulatory Commission under rule 2(1)(n) of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. The Regulations provide for appointment of a State Agency by the Regulatory Commissioner for accreditation and recommending the renewable energy projects for registration. Such accreditation is given either for a year or for lifetime. The appellant received charges in the form of one time accreditation charges for accrediting the applicant for lifetime and in the form of annual accreditation charges for accrediting the applicant for one year. Where a party permitted by the appellant to set up power plants, does not set up the same within the prescribed time period, the security deposit made by such party is forfeited. This amount is shown as 'forfeiture of security deposit' in

books of account of the appellant. However, where the project is successfully completed, the said deposit is returned back to the party. The amount collected towards forfeiture of security deposit is not towards any service and, therefore, no service tax is payable.

26. The impugned order has also confirmed the demand of service tax for the period till 30.6.2012 on the ground that such charges were received towards BAS rendered by the appellant. The contention of the appellant is that these charges are not towards BAS deserves to be accepted. The definition of BAS under section 65(19) of the Finance Act includes a variety of activities, but the charges received by the appellant are not towards any of the activities specified is section 65(19) of the Finance Act. The appellant does not promote or market the goods produced or provided by the person paying the same. The appellant also does not promote or market the services rendered by the person paying the same. These charges are not towards any promotional or marketing activities carried out by the appellant. In such a case, these charges are not covered under section 65(19)(i) or 65(19)(ii) of the Finance Act. The appellant does not provide any customer care services on behalf of the person paying the said charges. The appellant does not engage itself in either production/ processing of goods on behalf of such persons or provision of services on their behalf. The appellant also does not procure any goods or services for these persons. In such a case, these charges cannot be said to be covered under sub-clauses (iii), (iv), (v) and (vi) of section 65(19) of the Finance Act. The said charges recovered by the appellant are in the course of discharge of

mandatory statutory functions and the appellant cannot be said to be rendering any services in respect thereof. In this connection, reliance can be placed on the decision of the Tribunal in **Maharashtra Industrial Development Corporation** vs. **C.C.E., Nasik**[14]. It was held that no service tax is payable on the fee collected by the appellant towards service charges collected for maintenance of roads, street lights etc, as against these charges the appellant was discharging statutory functions under the Maharashtra Industrial Development Act, 1961 and the Rules made thereunder. The decision of the Tribunal was affirmed by the Bombay High Court in **Commissioner of C. Ex., Nasik** vs. **Maharashtra Industrial Development Corporation**[15].

27. In this view of the matter, it would not be necessary to examine the contention raised by the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case nor penalty and interest could have been invoked.

28. Thus, the impugned order dated 22.01.2015 passed by the Commissioner confirming the demand of service tax proposed in the show cause notice dated 24.04.2014 cannot be sustained and is liable to be set aside.

29. Such being the position, it would not be necessary to examine the submissions advanced by the learned counsel for the appellant for setting aside the order dated 20.05.2016 passed by the Commissioner rejecting the declaration filed by the appellant under

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14. 2014 (36) S.T.R. 1291 (Tri. - Mumbai)
15. 2018 (9) G.S.T.L. 372 (Bom.)

the Voluntary 2013 Scheme, which order has been assailed in Service Tax Appeal No. 52471 of 2016 filed by the appellant.

30. Thus, the order dated 22.01.2015 passed by the Commissioner is set aside and Service Tax Appeal No. 51569 of 2015 is allowed. Service Tax Appeal No. 52471 of 2016 has been rendered infructuous and is disposed of, accordingly.

(Order pronounced on **10.04.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

JB