

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11502 of 2014-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-COM-168-13-14 dated 13.01.2014 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Rishi Kiran Logistics P Limited

.... Appellant

Sector-8, Plot No. 8, Opp Gandhidham Post Office,
Gandhidham, KUTCH, GUJARAT-370201

VERSUS

Commissioner of Central Excise & Customs, Rajkot

.... Respondent

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat-360001

APPEARANCE :

Shri Amal Dave, Advocate for the Appellant

Shri Rajesh Nathan, Assistant Commissioner, (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 04.07.2023

DATE OF DECISION: 02.08.2023

FINAL ORDER NO. 11636/2023

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is entitled for the Cenvat credit in respect of SS Pipes, SS/CR Coils, MS Angles, Plastic Hose assembly, various types of Valves and Valve Automation system considering them as capital goods as well as input. These goods were used for erection/ fabrication and manufacture of new tank. The facts of the case are that the appellant are provider of service of storage and warehousing service. They have used the aforesaid goods for fabrication, erection and construction of storage tank on which they have availed Cenvat credit and the said Cenvat credit was utilized for payment of service tax for 'storage and warehousing' service. The Revenue has disallowed the Cenvat credit on the ground that the tank constructed and erected by the appellant is not

moveable goods accordingly, in terms of Rule 3(1), the appellant is not entitled for Cenvat credit.

2. Shri Amal Dave, learned Counsel appearing on behalf of the appellant at the outset submits that this issue is no longer *res-integra* as identical cases have been decided in various decisions of this Tribunal. Moreover, in the appellant's own case, learned Commissioner (Appeals) allowed the appeal by extending Cenvat credit on the very same goods therefore the issue is no longer *res-integra*. He placed reliance on the following judgments:-

- (a) Bridge & Roof Co (India) Limited. vs. CCE & ST, Vadodara-I 2023(6) TMI 700-Cestat Ahmedabad
- (b) Bharti Realty Limited vs. CST, Delhi-III - 2022 (65) GSTL 234 (Tri.-Del.)
- (c) Bharti Reality Limited vs. Principal Commr. CGST, Delhi South - 2023 (5) TMI 565-CESTAT New Delhi
- (d) Bengal Ambuja Housing Development Limited vs. CGST Kolkata - 2023 (3) TMI 801- CESTAT Kolkata
- (E) CCE, Vishakhapatnam-II vs. Sai Sahmita Storages (P) Limited - 2011 (2) TMI 400-Andhra Pradesh High Court

3. Shri Rajesh Nathan, learned Assistant Commissioner, (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the record, we find that as per the submission of the learned Counsel and grounds of appeal they have raised the following grievances in grounds of appeal:-

"There is a grave violation of the principles of natural justice and there is also a total non-application of mind on part of the adjudicating authority in the adjudication proceedings, and therefore the whole decision making process stands vitiated; and the impugned order is therefore void in law. A perusal of the order passed by the Commissioner shows that various submissions and explanations tendered by the appellant are just discarded, and binding precedents in form of decisions of this Hon'ble

and judgments of the Courts of Law have also not been considered at all though brought to the notice of the Commissioner. The appellant has explained in the adjudication proceedings that the Circulars issued by the Board holding that storage tanks were not movable and not excisable goods were not relevant in this case because the issue involved was not whether storage tanks attracted excise duty or not, and the appellant has also brought to the notice of the Commissioner decisions of this Hon'ble Tribunal and judgments of the Hon'ble Andhra Pradesh High Court and Karnataka High Court wherein it is held that properties like Mall, Storage tanks, Pollution Control Equipment etc. were also covered under the Cenvat Scheme as input as well as capital goods for allowing Cenvat credit because construction of such properties was not the end of the matter when such properties were used for providing taxable service or for manufacture of excisable goods; but these binding precedents are neither followed nor distinguished by the Commissioner, and relevant explanations and submissions made by the appellant in the adjudication proceedings have also not been discussed nor any grounds given for not accepting such submissions. Thus, there is a grave violation of the principles of natural justice in the adjudication proceedings and the Commissioner has displayed a total non-application of mind to the submissions and explanations tendered by the appellant in the adjudication. The impugned order therefore deserves to be set aside on this ground itself.

The principles of natural justice require that an authority deciding a lis between the parties must give reasons for not accepting any submission or plea of the assessee so as to enable the higher appellate authority to decide whether rejection of a particular submission was correct or not. Requirement of giving reasons for not accepting any submission or plea of the assessee while deciding a case assumes because arbitrariness in adjudication is avoided when reasons are given by the adjudicating authority. In the instant case, however, no grounds or reasons are given by the Commissioner for not relevant submissions and explanations tendered by the appellant; and no discussion at all is made in the impugned order as regards the case law cited by the appellant in adjudication proceedings. The Commissioner has recorded at para 9(c) of the impugned order the case law relied upon by the appellant in support of the submission that Cenvat credit was admissible even when immovable property was constructed, fabricated or erected by using inputs, capital goods and input services, and the Commissioner has also recorded at para 9(d) of the impugned order the case law relied upon by the appellant in support of the submission of time-bar, but no ground or reason is given in the "discussion and findings" portion of the impugned order for not following these decisions and judgments though they are all very relevant to the issues involved in this case. Thus, there is a gross violation of the principles of natural justice in the adjudication process and the Commissioner's approach in the adjudication process has been wholly unreasonable and arbitrary. The impugned order which is made in violation of the principles of natural justice is therefore void in law, and hence liable to be set aside."

From the above ground, we do agree with the submission of the appellant.

In the above aground and the submission pointed out by learned Counsel that despite various decisions on the identical issue and the subsequent view taken by the department, the Adjudicating Authority has not considered the judgments viz-a-viz facts of the present case. Therefore, we are of the view that Adjudicating Authority must reconsider the entire matter based on the

judgments which were passed much after the impugned order passed by him. Therefore, it is incumbent on the Adjudicating Authority to reconsider the whole issue in the facts of the present case equitable with various judgments delivered subsequent to the passing of the impugned order.

5. Accordingly, we set-aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order keeping in mind the observations made hereinabove. The appeal is allowed by way of remand to the Adjudicating Authority. Since this appeal is of 2014, the Adjudicating Authority shall pass denovo order within two months from the date of this order.

(Pronounced in the open court on 02.08.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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