Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 11873 of 2014 - DB

(Arising out of OIO-RAJ-EXCUS-000-COM-173-13-14 dated 28/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

C.C.E. & S.T.-Rajkot ....**Appellant**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

VERSUS

Shreenath Motors P Ltd ....**Respondent**
Gondal Ahmedabad By Pass Circle,
Gondal Road, N H 8-B, Vavdi,
Rajkot, Gujarat

APPEARANCE:
Shri Rajesh Nathan, Assistant Commissioner for the Appellant
Shri Sudhanshu Bissa & Shri Amal Dave, Advocates (AR) for the Respondent

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

Final Order No. A/ 12172 /2023

DATE OF HEARING: 06.07.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

The issue involved is that whether the respondent is liable to pay 5%/6% of the value of exempted service i.e. Trading Activity in the admitted fact that the respondent have reversed the proportionate credit attributed to such exempted service along with interest. The Adjudicating Authority had dropped the show cause notice on the ground that once the respondent reversed the proportionate credit attributed to exempted service i.e. Trading Activity along with interest, no demand of 5%/6% of the value of exempted service is sustainable. The Learned Adjudicating Authority considering the judgment in the case of M/s. Foods, Fats & Fertilizers Ltd Vs. CCE, Guntur – 2009 (247) ELT 209(Tri. Bang) dropped the proceeding.

1.2 Being aggrieved by the Order-In-Original, the Revenue filed the present appeal on the ground that since the respondent have not opted for the option of proportionate reversal of credit the same cannot be allowed and demand of 5%/6% of the value of exempted service should be sustained.

2. Shri Rajesh Nathan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that since the respondent have not opted for the option by giving in writing to the department, they are not entitled for proportionate reversal of the credit and consequently the respondent is required to pay 5%/6% of the value of exempted service.

3. Shri Sudhanshu Bissa, Learned Counsel along with Shri Amal Dave, Learned Counsel appearing for the Respondent, takes support from the impugned order. He further submits that even after passing of the impugned order various judgments were passed wherein it was held that when assessee reversed the proportionate credit attributed to the exempted service/goods, the demand under Rule 6 (3) equal to 5 %/6% of the value of exempted service/goods will not sustain. He placed reliance on the following judgments:-

- CCE vs. Himmat Glazed Tiles – 2018 (15) GSTL 486 (Guj.)
- Mepro Pharmaceuticals P. Ltd - 2022 (4) TMI 423 – CESTAT AHMEDABAD
- AMI Life sciences P. Ltd - 2022 (4) TMI 423 – CESTAT AHMEDABAD
- M/s. Corona Vitrified P. Ltd & West Coast Pharmaceuticals Works Ltd – Final Order No. A/13152- 13153/2017
- M/s. Sanstar Bio Polymers Limited – Final Order No. A/12475/2021 dated 29.10.2021
- Bombay Minerals Ltd – 2019 (29) GSTL 361 (Tri.Ahmd)
- Welspun Corp. Ltd – 2019 (368) ELT 179 (Tri. Ahmd)

- M/s. P & B Pharmaceuticals Ltd – Final Order No. A/12299/2021 dated 02/04.08.2021
- CCE, Ahd – II Vs. Maize Products - 2009 (234) ELT 431 (Guj.)
- CCE vs. Maan Pharamaceuticals Ltd – 2011 (263) ELT 661 (Guj.)
- Mercedez Benz India (P) Ltd vs. CCE, Pune-I - 2015 (40) STR 381 (Tri. Mumbai)

4. We have carefully considered the submission made by both sides and perused the records. We find that there isno dispute regarding proportionate reversal of cenvat credit along with interest attributed to the value of exempted service i.e. Trading Activity. Therefore, the demand under other option i.e. 5%/6% of the value of exempted service (trading activity) will not sustain as consistently held by various high court and this Tribunal and also by the judgments cited (Supra) by the learned counsel. Accordingly, the issue is no longer res-integra and the same stands settled in the favour of the assessee.

5. Accordingly, the impugned order is upheld and Revenue's appeal is dismissed.

(Pronounced in the open court on 27.09.2023)

RAMESHNAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Geeta