CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

EXCISE Appeal No. 13533 of 2014
(Arising out of OIO-VAD-EXCUS-001-COM-09-14-15 dated 24.07.2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

SABIC INNOVATIVE PLASTICS INDIA PVT LTD ...Appellant
P.O. JAWAHARNAGAR,
P.O. JAWAHARNAGAR,
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.-VADODARA-I ...Respondent
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:
Shri Rajan Mishra, Advocate appeared for the Appellant
Shri Tara Prakash, Deputy Commissioner (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12277 /2023

DATE OF HEARING: 15.09.2023
DATE OF DECISION: 16.10.2023

RAJU

This appeal has been filed by Sabic Innovative Plastics India Private Limited.

2. Learned counsel for the appellant pointed out that the demand of show cause notice was issued to them demanding reversal of cenvat credit in respect of the services under the head of Management Consultancy Service received by them from a foreign person.

2.1 Learned counsel pointed out that the appellants were receiving management consultancy service and other services. In respect of all other services, the appellants were reversing the cenvat credit in proportion to the exempted services provided by them in terms of Rule 6 of Cenvat Credit Rules, 2004. However, in respect of Management Consultancy Service, they were not reversing the proportionate credit in respect of exempted services provided by them. Learned counsel pointed out that Management Consultancy Service is covered by the Rule 6(5) of Cenvat Credit Rules, 2004 which permitted them to avail 100% cenvat credit. Learned Counsel pointed out that prior to 01.04.2011, the so called exempted service, i.e. "Trading Activity" was neither considered as manufacturing activity nor as provision of taxable service. Learned counsel pointed out that irrespective of above fact at the material time Rule 6(5) permitted them to avail 100% credit of cenvat in respect of specified services, including 'Management Consultancy Service', in notwithstanding the Provisions of Rule 6(1), Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004. The said rule 6(5) read as follows:

> "Notwithstanding anything contained in sub-rules (1),(2) and (3), credit of whole of Service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm). (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of Section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation tothe manufacture of exempted goods or providing exempted services."

3. Learned Authorized Representative relies on the impugned order.

4. We have considered the rival submissions. We find that the appellants have availed cenvat credit in respect of 'Management Consultancy Service' obtaining from foreign entity. The appellant had paid the service tax under the head of 'Management Consultancy Service' on reverse charge basis and availed the credit of the same. While on the one hand, the appellants are providing taxable services, the appellants are also engaged in trading activities. The Revenue is of the opinion that the trading activities are in the nature of exempted services and therefore, the appellants are required to reverse the cenvat credit proportionately in terms of Rule 6(1), Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004. On the other hand, the appellants are of the view that the service of 'Management Consultancy Service' is covered by Rule 6(5) of the Cenvat Credit Rules, which exempts them from the provisions

of Rule 6(1), Rule 6(2) and Rule 6(3) of the Cenvat Credit Rules 2004. Rule 6(5) of the Cenvat Credit Rules, reads as under:

> "Notwithstanding anything contained in sub-rules (1),(2) and (3), credit of whole of Service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm). (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of Section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation tothe manufacture of exempted goods or providing exempted services."

It is seen that the management consultancy service is covered under sub clause (r) of Clause 105 of Section 65 of the Finance Act and therefore, included within the mischief of Rule 6(5) of Cenvat Credit Rules, 2004. A perusal of the impugned order shows that the Commissioner has relied on certain decisions of Tribunal holding that the trading activity is neither an output service nor a manufactured product liable to central excise duty, therefore, cenvat credit availed in respect of Trading Activity can be denied. Rule 6(1), Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004 reads as follows:

> "As per Rule 6(1) of the Cenvat Credit Rules, 2004, the CENVAT credit shall not be allowed on such quantity of input service which is used for provision of exempted services, except in the circumstances mentioned in Sub-Rule (2).
>
> Rule 6(2) speaks about maintenance of separate accounts for input service meant for use in providing output service and to take CENVAT credit only on that quantity of input service which is intended for use in providing output service on which service tax is payable.
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> Rule 6(3) of the Cenvat Credit Rules, 2004, the service provider has the option not to follow the above procedure and follow the procedure to pay an amount equivalent to the CENVAT credit attributable to input services used for provision of exempted services subject to the conditions and procedure specified in Sub-Rule (3A). It is also clarified that the above procedure applies to common input services and credit shall not be allowed on input services used exclusively for the provision of exempted service."

5. Since rule 6(5) of the Cenvat Credit Rules, 2004 excludes the credit availed on Management Consultancy Service from the application

of Rule 6(1), 6(2) and 6(3) of the Cenvat Credit Rules, 2004, no reversal of cenvat credit is required.

6. In view of above, the impugned order cannot be sustained. The appeal is allowed.

(Pronounced in the open court on 16.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha