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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10514 of 2019
(Arising out of OIA-CCESA-SRT-APPEALS-PS-699-2018-19 Dated- 20/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Kedar Metals Pvt Ltd **........Appellant**
Plot No 35 Panchmahal Udyog Nagar
Bhimpore,Daman, Ut

VERSUS

C.C.E. & S.T.-Daman **......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - 396191

WITH

Excise Appeal No. 10547 of 2020
(Arising out of OIA-CCESA-SRT-APPEAL-PS-167-2019-20 Dated- 21/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

KEDAR METALS PVT LTD **........Appellant**
Plot No.35, Panchal Udyog Nagar , Bhimpore
Daman, Daman, Gujarat

VERSUS

C.C.E. & S.T.-Daman **......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - 396191

APPEARANCE:
Shri N.V Suchak, Chartered Accountantfor the Appellant
Shri J.A Patel , Superintendent (Authorised Representative) for the Respondent

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

Final Order No. A/ 12554-12555 /2021

DATE OF HEARING: 25.11.2021
DATE OF DECISION: 25.11.2021

RAJU

The issue involved is if the demand of an amount at the rate of 5%/6%/7% of the value of exempted services in terms of rule 6 of Cenvat Credit Rules, 2004 can be made against the appellant.

2. The Show cause notice alleges that the appellant has availed input credit of common services namely Banking and Financial Services, Professional Services, Telephone Services, Credit Rating Services and Membership of CAPEXILE. The Show cause notice as well as orders of the lower authority do not identify the exact amount of credit taken and the exact nature of common services on which the credit was availed. Earlier in the similar circumstances a matter in appellants own case was decided for the period 2013- 2014 and 2015- 2016 and the matter was remanded with the following directions:

> *"4. Heard both sides and perused the record. Demand was raised under Rule 6(3A) i.e. 5 % / 6%/7% of the value of exempted services. It is the submission of learned Chartered Accountant that during the period involved in all the three cases, no Cenvat credit of common input services was availed. If this is correct, then the question of raising any demand under Rule 6(3A) will not arise. However, the fact whether during the period 2013-14 to 2015-16 appellant has not availed Cenvat credit or otherwise, has neither been properly submitted by the appellant nor the Adjudicating Authority or Commissioner (Appeals) has verified. Therefore, in my considered view, the matter should go back to the Adjudicating Authority to verify whether the appellant has availed Cenvat credit on common input service during the relevant period. If the appellant has not availed any Cenvat credit, the demand will not sustain. Moreover, the issue has already been decided by this Tribunal for the previous period in order dated 21.08.2018. The Adjudicating Authority shall also consider the said judgment of this Tribunal while passing the de-novo order. As regards the learned Authorized Representative's submission in the case of Welspun Corp. Limited (supra), I find that though the Hon'ble High Court has admitted the appeal but no stay is granted therefore, order of this Tribunal in the case of Welspun Corp. Limited (supra) will remain in force."*

3. I find in the instant case too the facts are identical and the matter needs to be remanded for the identical reasons. In view of above the impugned order is set aside and the matter is remanded back to the Original Adjudicating Authority to re-adjudicate in terms of direction given in order No A/10749-10751/2020 dated 05.03.2020 in this case as well.

4. Appeals are allowed by way of remand.

(Dictated and pronounced in the open court)

(Raju)
Member(Technical