

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**  
**West Zonal Bench AHMEDABAD**

**COURT NO. I**

**Appeal No. ST/14062/2013 -DB**

[Arising out of Order-in-Original No OIO-STC/33/COMMR/AHD/2013 dated 12.09.2013 passed by Commissioner of Central Excise & ST, Ahmedabad]

M/s. Ahmedabad Municipal Transport Services : **Appellant**

**vs.**

Commissioner of Central Excise & ST, Ahmedabad : **Respondent**

Appearance:

Shri Jigar Shah, Advocate for the Appellant

Shri Sameer Chitkara, Additional Commissioner (AR) for the Respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**

**Hon'ble Mr. Raju, Member (Technical)**

**Date of Hearing/ Decision : 06.12.2018**

**Final Order No. A/12799 / 2018**

**Per : Ramesh Nair**

The issue involved is whether the appellant is liable to pay 6%/8%, in terms of Rule 6(3) of Cenvat Credit Rules, 2004.

2. Shri Jigar Shah, Ld. Advocate appearing on behalf of the appellant submits that the appellant have reversed the major part of the Cenvat credit, after the discrepancy was pointed out by the audit and balance part was reversed subsequently in the periodical returns. He submits that, since the Cenvat credit attributable to the exempted service has been reversed,

the demand of 6%/8%, under Rule 6(3) will not sustain. He placed reliance on the judgment of this Tribunal in Final Order No. A/12697/2018 dated 03.12.2018 in the case of *Welspun Corp Limited vs. CCE, Kutch (Gandhidham)*.

3. Shri Sameer Chitkara, Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order. He submits that the appellant have taken credit at the time of receipt of service. Accordingly, the the appellant cannot be escaped from payment of 6% / 8% under Rule 6(3) and the subsequent reversal of credit will not help the appellant. He also submits that since there is a clear violation of the provisions of Rule 6(3), the appellant is liable for penalty under Rule 15 of Cenvat Credit Rules, 2004.

4. We have carefully considered the submissions made by both sides and perused the record. We find that the issue to be decided is whether the appellant is liable to pay 6% or 8% of the value of exempted service, in terms of Rule 6(3) of Cenvat Credit Rules, 2004. Considering the submissions of the Id. Counsel that the entire Cenvat credit attributable to the exempted service has been reversed, the demand under Rule 6(3) i.e. 6%/8% of the value of exempted service will prima facie not survive. However, the calculation of Cenvat credit attributable to exempted service has not been

verified by the lower authorities. As per the submission of the Id. Counsel, reversal was shown in the periodical returns filed with the department which has not been seen by the department as the same was not submitted at the time of adjudication. In this position, we are of the view that matter should go back to the Adjudicating Authority to verify the quantum of Cenvat credit attributable to the exempted service and reversal thereof. Needless to say that appellant is liable for payment of interest on the amount of reversal of Cenvat credit right from taking the credit till the date of reversal.

As per our above observations, we set-aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order.

*(Order dictated and pronounced in the open court)*

**Raju**  
**Member (Technical)**

**Ramesh Nair**  
**Member (Judicial)**