CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE Appeal No. 12139 of 2018-DB

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-790-2017-18 dated 08.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Jakson Limited ...Appellant

Survey No. 199/1 & Others, Village-kalsar, Taluka-pardi,
Valsad, Gujarat-396185

VERSUS

C.C.E. & S.T.-Surat-i ...Respondent

New building...opp. Gandhi baug,
chowk bazar,
surat,gujarat-395001

Appearance:
Shri Amber Kumrawat, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 12342/2024

DATE OF HEARING: **18.06.2024**
DATE OF DECISION: **09.10.2024**

RAMESH NAIR

The brief facts of the case are as under :

M/s Jakson Limited (hereinafter referred to as "the Appellants") are inter-alia engaged in the manufacturing of Electric Generating Sets falling under Chapter 85 of the Central Excise Tariff Act, 1985 as well as in trading of various components and spare parts of DG sets.

1.1. Under the Central Excise regime, the goods manufactured by the Appellants were leviable to Central Excise duty. Accordingly, the Appellants were clearing their finished goods on payment of Central Excise duty and availed CENVAT credit on inputs, capital goods and input services in terms of

Rule 3 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "Rules").

1.2. The spare parts and various components of DG sets traded by the Appellant were exempted from payment of duty in terms of Notification No. 03/2011-CE [NT] dated 01.03.2011 [w.e.f. 01.04.2011). The Department officials observed that though the assessee had used the input goods in the manufacture of dutiable final products viz. Electric Generating sets as well as exempted services ie. trading activity of various components and spare parts of DG sets, they failed to maintain the separate records in respect of receipt, consumption and inventory of above mentioned cenvatable input services used in the manufacture of dutiable as well as exempted services, under Rule 6 (2) of Cenvat Credit Rules, 2004.

1.3. It was observed that Rule 6 (2) of the Rules casts an obligation on the manufacturer of dutiable goods and exempted service, to maintain separate accounts for receipt, consumption and inventory of input and input services meant for use in the manufacture of dutiable final products and the input/input services meant for use in manufacture of exempted goods and take cenvat credit only on that quantity of input/input services which are intended for use in the manufacture of dutiable goods.

1.4. In terms of Rule 6 (3) of the Rules, the manufacturer of goods opting not to maintain separate accounts were required to exercise the options prescribed and either pay an amount equal to 6%, as the case may be, calculated on the value of exempted goods or proportionally reverse the cenvat credit of inputs and input services used in relation to the manufacture of exempted goods subject to conditions and procedure as specified in Rule 6(3A) of CCR, 2004.

1.5. The officials observed that the Appellant has not followed either of the options and hence, they are liable to pay an amount equal to 6% on the value of exempted goods.

1.6. Pursuant to the aforesaid investigation dated 18.03.2015 and 19.03.2015, the Appellant reversed Cenvat credit for Rs. 1,65,61,035.91 @ 6% of value of traded goods dated 19.03.2015. Moreover, an audit of the Appellant's records was conducted by the Excise officers of Valsad Commissionerate resulting into Audit Report No. 374/ VASAD/ VALSAD. 2014-2015(Gr.-32) dated 27.04.2015 wherein a similar observation as regards non-compliance with Rule 6 was made and accordingly an audit para seeking necessary action on the part of Appellants was raised.

1.7. As per the instructions received form the Audit Officers, the Appellant reversed the entire credit of Rs. 4,88,890/- taken on common input services during the relevant period, along with applicable interest of Rs. 1,40,599/- paid vide Form GAR-7 dated 28.10.2015 and informed about the same to the Audit Officer in response to the respective audit para. Subsequently, in accordance with the directions of the Audit officers, the Appellant took re-credit of the amount of Rs. 1,65,61,036/-, which was previously reversed on 19.03.2015, dated 02.11.2015.

1.8. In the above premises, the Appellant was issued a show cause notice dated 28.11.2016 inviting the Appellants to show cause as to why the amount of Rs. 1, 68, 38,813/- calculated for the period March 2013 to December 2014 should not be dermanded and recovered from them under Rule 14 of the Rules read with proviso to Section 11A of the Act, along with interest and penalty.

1.9. On 18.03.2017, the Appellant filed its detailed reply, inter-alia, on the ground that they had reversed the entire credit of input services along with interest. The reversal of entire cenvat credit shall amount to not having availed the credit at all. Thus, the SCN deserves to be dropped. The Appellant also submitted that there cannot be any allegation of suppression as their records were audited from time to time and there is no wilful mis-statement on their part with an intention to evade payment of tax. Therefore, penalty cannot be imposed under Section 11AC of the Act.

1.10. The above SCN was adjudicated vide Order-in-Original dated 20.04.2017. wherein, the demand of Rs. 1, 68, 38,813/- was confirmed under Rule 14 of the Credit Rules read with Section 11A(4) of the Excise Act, along with interest and penalty under Sections 11AA and 11AC of the Act for the period March 2013- December 2014, with following observations:

A. Cenvat credit shall not be allowed on such input services used in clearance of exempted services;

B. In cases where the inputs/input services are used in dutiable as well as exempted goods, the provisions are made that separate account should be maintained for receipt, consumption and inventory of inputs/input services used in relation to manufacture of exempted goods and the credit shall be allowed only on inputs/input services which are used in manufacture of dutiable goods;

C. The Appellant has availed the common input services for the manufacture of dutiable goods as well as exempted services without maintaining any separate accounts for the receipt and use of common input services as required under Rule 6(2) of Cenvat Credit Rules, 2004.

D. The Appellant contravened Rule 6(3) (i) of Cenvat Credit Rules, 2004 by not paying an amount equal to 6% of value of the exempted services.

E. In case of non-exercising of any option as mentioned in either Rule 6(1) or Rule 6(3) of Cenvat Credit Rules, 2004, the Appellants have to pay an amount on a value which shall be the difference between the sale price and cost of the goods sold or 10% of cost of goods sold, whichever is higher.

F. As the issue came to the light after verification of the records, the Appellant has indulged in suppression of material facts with an intent to evade payment of duty. Thus, extended period of limitation under Section 11A(4) has been rightly invoked and penalty under Section 11AC is liable to be imposed read with Rule 15 of the Rules.

1.1. Being aggrieved by the order-in-original, the Appellants filed an appeal dated 08.03.2018, wherein the Ld. Commissioner (Appeals) upheld the confirmation of demand as mentioned in OIO and has rejected the appeal filed by the Appellant.

1.12. Aggrieved by the aforesaid order-in-appeal, the Appellants have preferred the present appeal, inter-alia, on the grounds detailed in the appeal memorandum.

2. Shri Amber Kumrawat learned Counsel appearing on behalf of the appellant submits that the appellant have admittedly paid the proportionate CENVAT Credit attributed to the trading goods along with interest from the date of availment of credit till the reversal thereof.

He submits that such proportionate credit was reversed in terms of Rule 6 (3)(2) for the period of 2014-2015 and intimated to the Central Excise Department about such reversal of credit. Therefore, the demand equal to 6% on the traded goods (exempted service) is not sustainable as held in following judgments:-

- Schwing Stetter India Pvt. Ltd Vs CCE 2024 (4) TMI 559-CESTAT
- Emami Limited Versus C.C.E & S.T. -Valsad 2023 (8) TMI 1232 CESTAT Ahmedabad
- GE Power India Ltd Vs CCE 2022 (11) TMI 861-CESTAT
- A Menarini India Pvt. Ltd vs CST 2022 (10) TMI 695-CESTAT
- Cranes & Structural Engineers Vs CCE 2016 (8) TMI 387-CESTAT
- Biochem Pharmaceuticals Industries Ltd. Versus C.C.E. & S.T. Daman. 2021 (10) TMI 1285 Cestat Ahmedabad
- PI Industries Versus Commissioner OF Central Excise & ST, Surat-II- 2023 (6) TMI 455 - Cestat Ahmedabad
- CCE Vs Alstom India Ltd 2022 (11) TMI 1070-CESTAT

3. Shri Tara Prakash, Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the record. We find that the demand of CENVAT Credit was raised which is equal to 6% of difference between the purchase price and sale price of trading goods in terms of Rule 6 (3). However, it is also not in dispute that the appellant have reversed the proportionate credit along with payment of interest. Therefore, after such reversal and payment of interest for the delayed period i.e. from the date of taking credit till the date of reversal of proportionate credit the demand equal to 6% under Rule 6 (3) shall not sustain as held in numerous Judgments, some of the Judgments are cited above by the appellant.

5. Therefore, the demand is not sustainable. Hence the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 09.10.2024 *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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