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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12190 of 2014 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-083-13-14 dated 28/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Sew Eurodrive India Pvt Ltd **........Appellant**
Plot No. 04, Gidc, Estate,
Por, Ramangamdi,
VADODARA, GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii **......Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA,GUJARAT-390023

APPEARANCE:
Shri Dhaval Shah, Advocate, Appeared for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) Appeared for the Respondent

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

Final Order No.12370/2024

DATE OF HEARING: 09.08.2024
DATE OF DECISION: 15.10.2024

RAMESH NAIR

The issue involved in the present case is that (1) Whether the appellant is liable to pay an amount under Rule 6 (3) for not maintaining separate accounts for the exempted services i.e. trading activity for the period 01.04.2007 to 31.03.2011, when the trading activities covered under exempted service by Notification No.13/2011-CE (NT) dated 31.03.2011. (2) Whether the demand for the extended period is time barred when the issue that the trading activity became exempted is due to Notification issued on 31.03.2011.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that the demand under Rule 6(3) is on the ground that the common input services attributed to dutiable goods as well as the trading activity and the trading activity became exempted service though w.e.f31.03.2011 but the same is as retrospective effect being brought as explanation in Cenvat Credit Rules. He submits that prior to 01.04.2011the trading activity was not exempted service. Therefore, provision of reversal of Cenvat Credit under Rule 6 (3) is not applicable for the said period. He

further submits that the demand is clearly time barred as concept of exempted service in respect of trading activity was brought only w.e.f. 01.04.2011,whereas the period involved in the present case is 01.04.2007 to 31.03.2011 and the show cause notice was issued on 14.02.2014. Hence, the entire period is time barred. He further submits that the periodical audits have been conducted that is for the period September, 2006 to June, 2007 in the year 2007-2008, for the period July, 2007 to September, 2008 during 2008-2009 and for the period August, 2008 to July, 2009 during 2009-2010 and no objection on the issue involved in the present case was raised. The first time the audit raised some doubt about trading activity in the year, 2012, therefore, there is no suppression of facts on the part of the appellant, hence, the demand is time barred. He placed reliance on the following judgments:-

- Infinium Motors Guj. Pvt. Ltd Vs. Comm. S.Tax, Ahmedabad (2023) 11 Centax 245 (Tri-Ahmd)
- Ingersoll-Rand Technologies and Services Pvt. Ltd Vs. CCE, Gaziabad. (2023) 8 Centax 41 (Tri. All.)
- Adani Energy Ltd Vs. Comm. S.T., Ahmedabad. 2022 (3) TMI 696 - CESTAT Ahmedabad
- Commr. of C. Ex., Bhopal Vs. MY Car (Bhopal) Pvt. Ltd 2019 (22) G.S.T.L. 273 (Tri. Del)
- GD Lab Solutions Pvt. Ltd Vs. CCE & S.T., Vadodara-I 2018 (2) TMI 1238 - CESTAT Ahmedabad
- Union of India &Ors. Vs. Martin Lottery Agencies Ltd (2009) 12 SCC 209

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

4. We have carefully considered the submissions made by both the sides and on perusal of record, we find that the demand under Rule 6(3) of Cenvat Credit Rules, 2004 was raised on the ground that there are some common input services on which credit has been availed which are also attributed to the trading activities which have been declared as exempted service under Notification 13/2011-CE (NT) dated 31.03.2011. We find that firstly, the trading activity became exempted only w.e.f 01.04.2011, the contention of the revenue that it has a retrospective effect is absolutely illegal as per the settled law by the Apex court in the various judgments that wherever, any clarification is against the assessee the same will have prospective effect and cannot have retrospective effect. Secondly, merely by declaring a trading

activity as exempted service under a deeming fiction, the same cannot have retrospective effect. Prior to the amendment of Notification No. 13/2011-CE (NT) whereby, the trading activity was made deemed exempted service, there was no clarity even with the department and therefore, the amendment was brought. Further, the appellant's records have been audited regularly during the relevant period and department after knowing that the appellant are involved in trading activity and availing the Cenvat credit on various input services, some of which are common input service did not raise any objection. Therefore, in our considered view, firstly, there was a bonafide belief that trading activity will not attract any demand under Rule 6 (3), secondly,in fact, there is absolutely no suppression of fact on the part of the appellant. Therefore, we also observed that as per various judgments cited by the appellant, it has been held that the effect of trading activity being exempted service is prospective and not retrospective. Therefore on the issue, there were multiple litigations, this also shows that there is no malafide intention on the part of the appellant to invoke extended period of demand.

5. Therefore, the entire demand is liable to set aside on the ground of time bar alone. Accordingly, we set aside the impugned order and allow the appeal.

Pronounced in the open court on 15.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi