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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10319 of 2017 - DB

(Arising out of Order in Original VAD-EXCUS-002-COM-032-16-17 dated 25/10/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Emerson Process Management India Private Ltd ....Appellant
(now Pentair Valves & Controls India Pvt Ltd) Survey No. 150,
Halol-kalol Godhra Road, P.o. Maghasar, Halol,
PANCHMAHALS
GUJARAT

VERSUS

Commissioner of Central Excise - VADODARA-II ......Respondent
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA,
GUJARAT-390023

APPEARANCE:
Shri Adithya Shrinivasan, 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. RAJU

Final Order No.12526/2024

DATE OF HEARING: 27.06.2024
DATE OF DECISION: 25.10.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay 10%/8%/6% of the total value of traded goods during the disputed period along with applicable interest and penalty, in a case when the appellant has availed the Cenvat credit in respect of common input service attributed to the dutiable goods as well as exempted service that is trading of goods.

2. Shri Adithya Shrinivasan, Learned Counsel appearing on behalf of the appellant at the outset submits that during the relevant period the trading activity was not declared as exempted service. Therefore, during the said period the appellant was not required to pay 10%/8%/6% on the difference of purchase price and sale price of the trading goods. He alternatively submits that the appellant is ready to pay the proportionate credit attributed to the trading activity if an opportunity is given to them. In support he placed reliance on the following judgments:-

- Infinium Motors Guj. Pvt. Ltd. vs. CST, Ahmd. - (2023) 11 Centax 245 (Tri. - Ahmd)
- Ingersoll-Rand Technologies & Services (P) Ltd. vs. CCE, Ghaziabad - (2023) 8 Centax 41 (Tri. - All)
- Idea Cellular Ltd. vs. CCE, Thane - I-2019 - TIOL-3299- CESTAT – MUM
- M/s. Lally Automobiles Pvt. Ltd. vs. CST Delhi (Final Order No.57481/2017)
- M/s. Lally Automobiles Pvt. Ltd. - High Court of Delhi (SERTA 7/2018)
- M/s. Lally Automobiles Pvt. Ltd. vs. CST Delhi (2019 (24) G.S.T.L. J115 (S.C.))
- Mafatlal Industries Ltd. vs. CCE & ST, Ahmd. - 2020 (43) G.S.T.L. 562 (Tri.- Ahmd)
- Bombay Minerals Ltd. vs. CCE & ST, Rajkot - 2019 (29) G.S.T.L. 361 (Tri.- Ahmd)
- Commissioner v. Bombay Minerals Ltd. - 2019 (29) G.S.T.L. J86 (Guj.)
- Sanofi India Ltd. vs. CCE & ST, Surat - II - (2023) 5 Centax 270 (Tri. – Ahmd)
- Woodward Governor (I) Ltd. vs. CCE, Delhi - IV - Final Order No. 60132 - 60135/2023
- Deccan Structural Systems Pvt. Ltd. vs. CCE, Bang - II - 2018-TIOL-2642- CESTAT-BANG
- Mercedes Benz India (P) Ltd. vs. CCE, Pune - I - 2015 (40) S.T.R. 381 (Tri.-Bom)
- CCE, Bhopal v. My Car (Bhopal) P. Ltd. - 2019 (22) GSTL 273 (Tri. - Del.)
- Marudhan Motors v. CCE, Jaipur - II - 2017 (47) STR 261 (Tri. - Del.)
- Adani Energy Ltd. vs. CST, Ahmd. - Final Order No. A/10250/2022

3. Shri Tara Prakash, Deputy Commissioner (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order. In support he placed reliance on the following judgments:-

- 2017 (5) GSTL 225 (Mad) - Ruchika Global Interlinks Vs. CESTAT, Chennai
- 2018 (10) GSTL 551 (Tri-Del) - Aksh Optifibre Ltd Vs. CCE, Jaipur-I
- 2014-TIOL-2186-HC-MAD-CX - FL Smidth P Ltd Vs. CCE

4. On careful consideration of the submissions made by both the sides and perusal of records, we find that the appellant is prepared to pay the

proportionate credit attributed to the trading activity. Therefore, we proceed to decide on this basis itself without going into the issue whether the during relevant time, the appellant was required to pay 10%/8%/6% of the value of exempted service. We further find that as per the calculation given by the appellant, the proportionate Cenvat credit comes to an amount as under:-

2008-2009	Rs.4,87,509/-
2009-2010	Rs.2,99,864/-
2010-2011	Rs.5,77,885/-
Total	Rs.13,65,259/-
Education Cess	Rs.47,998/-

Interest on the above amount at the rate of 18% from 01.07.2017 to 30.04.2024 is Rs.59,057.16 However, this calculation is the subject matter of verification by the lower authority. We find that in the catena of case laws it has been decided by various Forums including this Tribunal and High Courts that if the proportionate Cenvat Credit attributed to the exempted goods/ service is reversed along with interest if any arise, the demand of 10%/8%/6% will not sustain. Therefore, we hold that on the appellant reversing the proportionate Cenvat credit attributed to the trading activity the demand of 10%/8%/6% in terms of Rule 6(3) of Cenvat Credit Rules, shall not sustain. The adjudicating authority shall verify the correctness of the proportionate Cenvat credit and interest and payment thereof at the time of passing the denovo order.

5. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a denovo order keeping in mind the above observation made by this Tribunal.

(Pronounced in the open court on 25.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi