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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12863 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-270-2019-20 dated 30/08/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

COSMO FILMS LTD ....**Appellant**
Vemardi Road, Nr. Inox, Village- Navi Jithardi, Taluka: Karjan
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I ....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri Jigar Shah, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11247 /2022

DATE OF HEARING: 22.06.2022
DATE OF DECISION: 19.10.2022

RAMESH NAIR

This is the second round of litigation. Earlier this matter, had reached before this Tribunal in Appeal No. E/11568/2017-SM wherein this Tribunal vide Final Order No. A/10089/2018/2018 dated 11.01.2018, observed – the issue needs reconsideration by the adjudicating authority as the claim of the Appellant that the various input services which are being considered as common input services were in fact covered under the provisions of Rule 6(5) of Cenvat Credit Rules, 2004 is eligible for availment of full cenvat credit. Also note that the issue of applicability of Rule 6(3)(a) of the Cenvat Credit Rules, 2004 also needs to be considered by the lower authorities. Thus, the matter was remanded.

1.1 Pursuant to remand the adjudicating authority have made the following observations in the impugned Order-In-Appeal No. VAD-EXCUS-001-APP-270-2019-20 dated 30.08.2019 :-

> *" 7.1. In this regard, I find that the Appellant did not give any evidence and supporting documents regarding the name of such services and the amount of Cenvat Credit taken of such service. The Appellnt also did not submit supporting documents/ worksheet to the adjudicating authority. In the absence of any such evidence, benefit of Rule 6 (5) of the Cenvat Credit Rules, 2004 cannot be extended to the Appellant. In view of above, I reject these contentions of the Appellant."*

Being aggrieved the appellant is again before this Tribunal.

02. With this background, we have heard Shri Jigar Shah, Learned Advocate on behalf of the appellant who submits that the Appellant have reversed Cenvat Credit proportionately, on the basis of turnover of exempted goods and dutiable goods, with respect to common Input services, where used simultaneously, for production of both categories of goods. While reversing Cenvat Credit proportionately, the Appellant have not taken into consideration, Cenvat Credit of Service tax, admissible in case of 16 Taxable Services, which were covered under Rule 6(5) of the Cenvat Credit Rules, 2004.

2.1 The Learned Counsel further drawn my attention on the facts that Appellant also produced the details before the learned Adjudicating authority regarding the cenvat credit of service tax paid on various input services which falls within the realm of Rule 6(5) of Cenvat Credit Rule 2004.

03. Shri R P Parekh, Superintendent (AR) appearing on behalf of the revenue reiterated the finding of impugned order.

04. Heard both sides and perused the records. I find that learned Adjudicating authority in the impugned order held that the Appellant have not produced the supporting documents/ work sheet and amount of cenvat credit availed on services and therefore denied the benefit of Rule 6(5) of Cenvat Credit Rules 2004. Whereas Appellant claims that they have produced the documents and details before the learned Adjudicating authority. The Appellant also submits said Annexure -7, Annexure -8 and Annexure -9 before me. In the above circumstances, I have no option but to allow the appeal by way of remand once again. The impugned order is set aside and the learned Adjudicating Authority is directed to pass a speaking order after carefully examining the evidences on record and considering the submissions and documents of Appellant.

05. I, therefore, set aside the impugned order and remand the matter once again for *de novo*. The adjudicating authority is directed to pass an order afresh, after affording effective opportunity of hearing to the appellants in accordance with law as expeditiously as possible since this is the second time that the Tribunal is remanding the matter.

(Pronounced in the open court on 19.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul