CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11702 of 2018-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-COM-33-17-18 dated 15.03.2018 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

GE Power India Limited .... Appellant

Erda Road, Maneja,
VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent

1st Floor, Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

WITH

EXCISE Appeal No. 11107 of 2017-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-047-16-17 dated 31.01.2017 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

GE Power India Limited .... Appellant

Erda Road, Maneja,
VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent

1st Floor, Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

AND

EXCISE Appeal No. 11764 of 2019-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-COM-44-18-19 dated 30.03.2019 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

GE Power India Limited .... Appellant

Erda Road, Maneja,
VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent

1st Floor, Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

Shri T. Sivarajan Kalyanaranam & Shri Vikash Agarwal Chartered Accountants for the Appellants
Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Revenue.

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

DATE OF HEARING : 15.07.2022
DATE OF DECISION : 14.11.2022

FINAL ORDER NO. A/11367-11369 / 2022

RAMESH NAIR :

These three appeals are filed against respective Orders-in-Original passed by the Principal Commissioner of Central Excise & Service Tax, Vadodara, since involved common issues, are taken up together for disposal.

Appeal No.	OIO No.	Period	Demand (Rs.)
E/11107/2017	VAD-EXCUS-002-COM-047-16-17 dtd. 31.01.2017	April 2011 to May 2015	14,25,43,790/-
E/11702/2018	VAD-EXCUS-001-COM-33-17-18 dtd. 15.03.2018	June 2015 to March 2016	3,09,89,384/-
E/11764/2019	VAD-EXCUS-001-COM-44-18-19 dtd. 30.03.2019	April 2016 to March 2017	3,73,06,244

2. Briefly stated the facts of the case are that appellant are engaged in manufacturing and trading activity. During the relevant period, they have availed Cenvat Credit on the Input and input services. Alleging that the appellant also engaged in the activity of trading of goods and common input services have been used in the manufacture of excisable goods as well as in the trading activity, show-cause notices were issued during the relevant period to the appellant for recovery of 5%/ 6%/ 7% of the value of exempted service i.e. traded goods in accordance with Rule 6(3)(i) of the Cenvat Credit Rules, 2004 as amended. The allegation made in this regard is

that the appellant failed to maintain separate accounts to utilize the cenvat credit in the activity of manufacture of goods, providing taxable services and taxable activity and of exempted services i.e. trading activity. On adjudication, the demands were confirmed with interest and penalty on the appellants. Hence, the present appeals.

3. Shri T. Sivarajan and Shri Vikash Agarwal, learned Chartered Accountants appearing for the appellant submits that in the present matters Appellant were required to reverse the proportionate Cenvat Credit. Appellant have already reversed the Cenvat Credit. Therefore, basis of not allowing the reversal as per Rule 6(3)(iii) read with Rule 6(3A) by Ld. Adjudicating authority since the Appellant did not opt for the same at the beginning of year is legally not correct. It is settled principle that reversal of credit can be made belatedly even upto the stage of Tribunal. He placed reliance on the following judgments.

(i) Hello Minerals Water (P) Ltd. vs. UOI -2004 (174) ELT 422 (All)

(ii) M/s High Line Pen vs. CCE 2003 (158)ELT 168 (Tri.)

(iii) Franco Italian Co. Pvt. Ltd. Vs. Commissioner 2000 (120) ELT 792 (Tri. LB)

(iv) Punj Lloyd Ltd. vs. ST. Rohtak 2015(40)STR 1028 (Tri. Del)

(v) Mafatlal Industries Ltd. Vs. Commissioner of Central Excise & ST. - 2020 (43) G.S.T.L. 562 (Tri. - Ahmd.)

(vi) Tiara Advertising vs. Union of India -2019(10) TMI 27

(vii) Nava Bharat Ventures Ltd. vs. CCE Hyderabad – 2021(11)TMI 426

(viii) Spraying Systems India Ltd. vs. CCE- 2022-TIOL-17 –CESTAT-BANG.

4. He submits that as per the impugned orders, the Appellant cannot opt for reversal of proportionate Cenvat Credit availed on common input services in terms of Rule 6(3)(iii) of Cenvat Credit Rules 2004. However Rule 6 of

Cenvat Credit Rules 2004 provides three options for reversal of Cenvat Credit taken on input services used for exempted goods and exempted service, when the law has provided the option to the assessee to reverse the credit under any of the option which is beneficial to them, then in such a case adjudicating authority wrongly denied the exercise of option by the Appellant and confirmed the demand of Cenvat Credit on the basis of Rule 6(3)(i) and failed to appreciate that it cannot compel the Appellant to choose any particular option for reversal.

5. He also submits that no reversal of Cenvat credit is required in respect of common input services pertaining to the goods exported and goods sold to mega power projects. He placed reliance on the following judgments.

(i) CCE Vs. Bharat Heavy Electronics Ltd. – 2015 (329) ELT 893 (Tri.)

(ii) Lavino Kapur Cottons Pvt. Ltd. vs. CCE, Thane- 2015(39)STR 514 (Tri.)

(iii) Jolly Board Ltd. vs. CCE, Aurangabad -2014-TIOL-316-CESTAT-MUM

(iv) CCE Vs. Drish Shoes Ltd. – 2010 (254)ELT 417 (HP)

(v) Repro India Ltd. vs. Union of India, 2009(325)ELT 614 (Bom)

6. On the other hand, the Shri Dinesh M. Prithiani, learned Assistant Commissioner (AR) appearing for the Revenue reiterated the finding recorded in the impugned orders.

7. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present matter appellant admittedly reversed the proportionate Cenvat Credit attributable to the trading activity/ exempted service, this is not under dispute. Therefore in

our view, the appellant have complied with the condition prescribed under Rule 6(3)(ii) read with sub-rule (3A) of Rule 6 of Cenvat Credit Rules, 2004 therefore demand of huge amount on the total value of the trading activity @ 5% / 6%/ 7% cannot be demanded. We are also of the view that Rule 6 of the Cenvat Credit Rules is not enacted to extract illegal amount from the assessee. The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods or exempted services. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that if the assessee does not opt any of the option at a particular time, then option of payment of 5%/ 6%/ 7% will automatically and by default be applied. Therefore we do not understand that when the appellant have categorically agree for the reversal of Cenvat credit by way of opting for option provided under sub-rule (3)(ii), how Revenue can insist that option (3)(i) under Rule 6 should only be followed by the assessee. On this issue, much water was flown as per the judgments cited by the appellant which directly support the case in hand.

8. As per our above discussions and finding, we are of the considered view that demand confirmed by the adjudicating authority has no legs and therefore the same cannot be sustained. The impugned orders demanding amount equal to 5%/ 6%/ 7% are set aside and the matters are remanded to the adjudicating authority to verify and pass a fresh order regarding the correctness of proportionate credit to be reversed in this matter after giving

a reasonable opportunity of hearing to the appellants. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 14.11.2022*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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