CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70262 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1507-19-20 dated 05/03/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s MD Everywhere India Pvt. Ltd., ...Appellant
(A-61, B/3, Sector-63, Noida-201301)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida ....Respondent

(C-56/42, Renu Tower, Sector 62, Noida-201301)

APPEARANCE:

Shri Yuvraj Singh, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70287/2023

DATE OF HEARING : 21 December, 2023
DATE OF DECISION : 21 December, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-1507-19-20 dated 05/03/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"5.1 I have carefully gone through the facts of the case, appeal memo including the grounds of appeal, submission made by the appellant both oral as well as written and relevant provisions of the Act. The appellant contended in the appeal that 'these Cenvat Credit were originally claimed by the appellant well within the alleged period of six months in its book of account. I find that Rule 4 of

Cenvat Credit 2004 provides the conditions for allowing the Cenvat Credit. For sake of clarity, I reproduce the relevant extracts of Rule 4 (7) of Cenvat Credit Rules, 2004, which are as under:

RULE 4. Conditions for allowing CENVAT credit. -

> *(7) of Cenvat Credit Rules provides that the CENVAT credit input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:*
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> ****************
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> *[Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:*
>
> *Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, may be, challan referred to in rule 9 is not made within three months of the date of the he invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:]*

5.2 From the above, I find that Rule 4(7) of Cenvat Credit Rules provides to take Input Service on or after the day on which the invoice, bill or, as the case may be, Challan referred to in rule 9 is received, Further It is also provided in the said rules that the payment should be made to the service provider within three months from the date of taking of Cenvat Credit of such input Service. I find in the present appeal, the appellant has contended that they had availed the aforesaid Cenvat Credit in their books of account during the period 30.11.2013 to 30.06.2014. Further the appellant admitted that the payment was made to the Service provider by them on 12.01.2015, 13.03.2015 & 24.02.2015. Thus, I find that the aforesaid credit of Input service was not available in their books of account as they failed to make the payment to the service provider within three month of the availing of such Input Service Credit. Therefore, the contention of the appellant that they had availed the input Service prior to 01.09.2014 i.e. the effective date of limitation period of six month is not acceptable.

5.3 Further, I observe that Notification No 21/2014-C.E. (N.T.) dated 11.07.2014 restricted that the manufacturer or the provider of output service shall not take CENVAT credit after six month of the date of issue of any of the documents specified in sub-rule (1) of rule 9 of Cenvat Credits Rule ,2004 during the material period. I find that in the present case, appellant filed the refund claim on the invoices covering dated 30.11.2013 to 30.06.2014 and payment was made on 12.01.2015, 13.03.2015 & 24.02.2015. Thus the appellant failed to comply with Rule 4 of Cenvat Credit Rules 2004 read with Notification No.21/2014-CE. (N.T.) dated 11.07.2014 for availment of input Service Credit on such invoices within the prescribed period. Thus, I hold that the refund claim is rightly rejected by the adjudicating authority.

6. In view of the above discussion and findings, the Order-in-Original No. R-51/DC/D-VI/N/2018-19 dated 14.03.2019 is upheld and the appeal bearing No. 196/CE/Noida/Appl/NOI/2019-20 dated 31.05.2019 filed by M/s MD Everywhere India Pvt Ltd.,A-61, B/3, Sector-63, Noida is rejected."

2.1 Appellant has filed a refund claim in terms of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27 of 2012-CE(NT) dated 18.06.2012 for the quarter January, 2015 to March, 2015 for Rs.14,16,671/-.

2.2 After following the due process adjudicating authority vide his Order-in-Original No.R-51/DC/D-VI/N/2018-19 dated 14.03.2019 sanctioned the refund claim to the tune of Rs.5,25,437/- and rejected the refund claim of Rs.8,34,921/- on the ground that accumulated Cenvat credit which is claimed as refund was taken by the appellant for stipulated period of six months from the date of issue of invoices in respect of services providers namely M/s Arpit Chaurasia and M/s Om Nath Mehra & Associates.

2.3 Aggrieved appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order referred in para-1 above. Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Yuvraj Singh Advocate for the appellant and Shri Manish Raj Authorized Representative appearing for the revenue.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 From the impugned order it is quite evident that the invoices against which the appellant has taken the credit as indicated in the table below:-

Name of the Party	Details of invoice	J V No	J V Booking Date	Date and details of payment made To service provider

Arpit Chaurasia	08 Date 01.11.13 (1180377)	549	30.11.13	384284 Date 12.01.2015
	09 Date 01.12.13 (2015212)	648	31.12.13	
	10 Date 01.01.14 (1392736)	665	10.01.14	
Omnath Mehra & Associates	03 Date 28.09.2013	394	30.09.13	402575 Date 24.02.2015
	04 Date 26.12.2014	619	31.12.13	
	05 Date 25.03.2014	821	31.03.14	
	01 Date 01.07.2014	190	30.06.14	
	03 Date 01.10.2014	486	01.10.14	
	04 Date 26.12.2014	698	31.12.14	

This fact is noted in the show cause notice at para 3 and also in the Order-in-Original. From the perusal of the above it is quite evident that all these invoices are for the period prior to 01.09.2014.

4.3 Delhi Bench of this Tribunal in the case of Bharat Aluminum Company Ltd. [2019-TIOL-2567-CESTAT-DEL] has held as follows:-

> *4. We find from the impugned order of Commissioner (Appeals) that the appellant has referred to and relied upon various precedent decisions of the Tribunal laying down that the time restriction of six months would not apply to the invoices issued prior to 01/09/2014. The Appellate Authority, very religiously, mentioned all these decisions in the order but sad enough, did not refer to the same in the operative portion of his order. Very cryptically, Commissioner (Appeals) rejected the appeal by observing that since the law was amended and time limit of six months was laid, the credit availed after the period of six months from the date of the invoice is not available to the assessee.*
>
> *We really fail to appreciate the above conclusion drawn by Commissioner (Appeals) without even whispering about the applicability of various decisions referred to and relied upon by the appellant which clearly covers the issue in their favour. This attitude of Commissioner (Appeals) reflects on his predetermined mind to reject the appeals in a mechanical manner, thus putting the litigant into difficulty, apart from the increasing the burden and pendency of litigation at the higher level.*

5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions;

(i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad]

(ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366-CESTAT Bangalore]

(iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi]

(iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai]

(v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158-CESTAT Bangalore]

(vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi]

Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions."

4.4 The only reason stated in the impugned order for holding against the appellant is the delay beyond six months in taking the Cenvat credit. As this issue has been settled in favor of the appellant vide the above referred order of the Tribunal, I do not find any merits in the impugned order and set aside the same.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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