CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.52446 of 2015

(Arising out of the Order-In-Original Nos.-4-5/Commissioner-NOIDA-II-2014-15, dated -24/03/2015 passed by Commissioner, Customs & Central Excise, Noida-II)

M/s Denso India Ltd **.....Appellant**

(Village Tilpatta, Noida-dadri Road,
Surajpur, Greater Noida Industrial Area,
Gautam Budh Nagar
U.P 203207)

VERSUS

Commissioner of Customs & Central Excise, Noida-II
....Respondent

(Hotel Formulae-1, Wegman's Business Park,
Plot No.3, Knowledge Park-III,
Greater Noida-201306 U.P.)

<u>APPEARANCE:</u>
Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.<u>-70250/2024</u>

DATE OF HEARING : 09.05.2024
DATE OF DECISION : 09.05.2024

<u>P. K. CHOUDHARY:</u>

The present appeal has been filed by the appellant assailing the Order-In-Original No. 4-5/Commissioner-NOIDA-II-2014-15, dated 24.03.2015 by which learned Commissioner, Customs & Central Excise, Noida-II has passed the following order:-

ORDER

"1. I confirm both the demands raised for Rs. Rs.54,39,811/- vide SCN dt.22-12-2014 and Rs.49,08,110/- raised vide SCN dated 10/11-03- 2014, (totalling Rs.1,03,47,921/- (Rs One Crore Three Lakh Forty Seven Thousand and Nine Hundred Twenty One) only, to be recovered from the party, i.e. M/s Denso India Ltd. under

Rule 14 of the Cenvat Credit Rules, 2004 read with Sec. 11A of the Central Excise Act, 1944.

2. I confirm recovery of interest, at the applicable rates, on the aforesaid adjudged sums to be recovered from the party under Rule 14 of the said Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 from the party.

3. I impose penalty of Rs.1,03,47,921/- (Rs One Crore Three Lakh Forty Seven Thousand and Nine Hundred Twenty One) under Rule 15(1) of the Cenvat Credit Rules, 2004."

2.1 The facts of the case in brief that M/s Denso India Pvt. Ltd. (hereinafter referred to as 'the Appellants') is engaged in the manufacture of Alternator Assembly, Starter Assembly, Wiper Assembly, Magneto/CDI/FLY WH, Fan/Vent/Blower and Spares of Motor Vehicles. The Appellant was availing Cenvat credit on various capital goods, inputs and input services used directly or indirectly in the manufacture of excisable goods as per the provisions of the Cenvat Credit Rules, 2004. The Appellant, out of the duty paid inputs received in this factory, subsequently cleared certain quantity of inputs after performing quality check to another factory situated at Haridwar after reversing credit of excise duty availed on such inputs.

2.2 Audit of the Appellant was carried out from 31.03.2011 to 13.06.2012 for the period Oct, 2008 to Dec,2011 and the copy of Audit report was provided to the Appellant vide letter dated 25.07.2012. Afterwards, certain correspondence took place between the Appellant and the Jurisdictional Superintendent. The Superintendent asked the Appellant to deposit the amount of Credit in respect of the input services. As the Appellant was not in agreement with the audit report, therefore, sought the detail based on which such demand was made and the legal provisions for such requirement.

2.3 The Jurisdictional officer wrote to the Audit Team to provide the necessary detail, however, no information was received from the Audit Team till 09.04.2013. Thereafter, the department again sought detail from the Appellant. As the Appellant was not in agreement with the audit report, therefore, sought the detail based on which such demand was made and the legal provisions for such requirement.

2.4 After some correspondence, the first show cause notice dated 10.03.2014 was issued demanding the CENVAT Credit alleging as follows:

> *"17. Whereas it appears from the scrutiny of ER-1 returns of the party that they are regularly showing reversal amount of Cenvat credit under heading "Credit utilized when inputs or capital goods removed as such" [S.No.8(12)]. It is thus revealed that the party has been removing inputs as such from their factory. It also indicates that such inputs have not been used in the factory for the manufacture of final products. In such situation, <u>the party was required to reverse not only credit of Excise duty involved on inputs removed as such but also credit of Service Tax attributable to such inputs</u>. The party have however willfully* ***reversed only credit of Excise duty involved on such inputs and have not reversed the credit of Service Tax involved on inputs removed as such****. They also mis-declared that they have not removed inputs as such. Thus the party have deliberately availed credit of Service Tax, on inputs removed as such, worked out to (Rs. 5,10,422/-+ Rs. 43,97,688/-) Rs. 49,08,110/- (Rupees Forty Nine Lac Eight Thousand One Hundred & Ten only) on input services which were actually not used by them in their factory and have utilized the said credit towards payment of Excise Duty. In the light of the aforesaid facts the provisions of Section 11A(5) of the Central Excise Act, 1944 appears to be invokable in the instant case. The wrongly availed Cenvat credit of Service Tax is thus liable to be recovered by invoking extended period."*

2.5 Subsequently, another show cause notice dated 22.12.2014 was issued on the same grounds. The Appellant filed the reply and contested the demand. The impugned order has been passed upholding the demand. The Appellant being aggrieved by the impugned order preferred appeal against the impugned order. Apart from reiterating the submissions made in the memorandum of appeal filed by the appellant, the following written submissions are being made. Hence the present appeal before the Tribunal.

3. The learned advocate appearing on behalf of the appellant submits that the appellant is not liable to reverse reverse cenvat credit of the service tax availed on any services in relation to inputs received in the factory and part quantity of which was cleared to another factory because there is no provision in the Credit Rules or any other statute, which provides for reversal of such cenvat credit.

4. Learned Departmental Representative has justified the impugned order and prayed that the appeal filed by the appellant be dismissed being devoid of any merits.

5. Heard both the sides and perused the appeal record.

6. We find that the issue is no more *res integra* and has been decided by the Tribunal in the appellant's own case for the subsequent period i.e. from July 2015 to February 2016 and September 2014 to June 2015. The Tribunal vide Final Order No. 71087-71088 of 2018 dated 03.05.2018 passed in Excise Appeal No.70301 and 70302 of 2018 allowed the appeals filed by the appellant by holding as under:-

> *"4. On perusal of the Show Cause Notice, I observe that no specific provision of Cenvat Credit Rules requiring reversal of proportionate input Service Tax credit involved in the inputs cleared as such has been invoked. In fact, there is no such provision in the law. The requirement under Cenvat Credit Rules 2004 is that when the inputs are cleared as such the Central Excise duty involved in the inputs which is availed as Cenvat credit needs to be reversed. The appellants have precisely followed the said provision. Therefore, I do not find any violation of any provisions of Cenvat Credit Rules by the appellant in the present transaction. I, therefore, set aside the impugned Orders-in-Appeal and allow both the appeals. The appellants shall be entitled for consequential relief, as per law."*

7. We also find that the issue was examined by a Tariff Conference of Central Excise on technical matters organised by the CBIC and based on recommendation of such conference

were issued vide Instruction F. No. 96/85/2015-CX.I, dated 7-12-2015 as follows:

> **B.26 - Meerut Zone - CENVAT Credit - Reversal of Cenvat Credit in respect of Service tax paid on Input Services :**
>
> ***Issue :***
>
> Rule 3(5) of the Cenvat Credit Rules, 2004 provides as under :
>
> > "when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9"
>
> An audit objection has been raised that ***Cenvat credit taken in respect of service tax paid on input services like Customs Brokers charges, Clearing and Forwarding Agencies Services(C&F), GTA etc. used for procurement/ transportation of inputs/capital goods, should also be reversed at the time of clearance of inputs/capital goods as such from the factory of the manufacturer***. The present Rule 3(5) of the Cenvat Credit Rules, 2004 does not mention '***Input Services'*** amongst the credits required to be reversed and therefore it is not possible to demand reversal of credit of input services. There is need to amend the rules so that reversal of credit taken on input services can also be achieved
>
> ***Discussion & Decision***
>
> The conference noted that Rule 3(5) of the CENVAT Credit Rules, 2004 does not provide for reversal in respect of input services for a reason. Input services are consumed once the inputs and capital goods are received in the factory. ***<u>Thus, on receipt of inputs and capital goods, the associated input services have to be considered as consumed within the factory and become a cost to the business</u>***. Demand for reversal of the input services credit, ***when such input services cannot be reused***, unlike inputs and capital goods which are available for reuse would not be fair to the trade. Therefore, the conference concluded that the

present rule represents the correct provision in accordance with the principles of input tax credit. Rule 3(5) of the Cenvat Credit Rules, 2004, does not need any amendment. Audit para may be replied accordingly.

8. It has been the interpretation and understanding that such credit is already consumed till the inputs received and further there is no legal provision exists requiring the reversal of such credit, thus, the demand is not to be raised. The following allegation in the show cause notices based on which the demand was proposed has not legal backing.

9. We also find that this matter was before the Hon'ble Punjab & Haryana High Court in the case of **Commissioner of Central Excise, Chandigarh-I V/s Punjab Steels reported in 2011 (21) S.T.R.5 (P & H)** and the substantial question of law before the Hon'ble High Court was whether the credit of input service availed at the time of receipt of inputs is required to be reversed at the time of clearance of inputs as such when the said service tax credit is in respect of or related to such inputs?

10. The Tribunal reversed the orders passed by the lower authorities with the following observations and relying upon its earlier order passed in ***Chitrakoot Steel & Power Pvt. Ltd.*** **v.** ***Commissioner of Central Excise*** [2008 (10) S.T.R. 118 (Tri. - Chennai)] :

"I have carefully considered the submissions from both the sides and perused the records. The appellant had received certain inputs and for transporting those inputs to the factory, had availed GTA service in respect of which service tax paid was Rs. 275684/- and the credit of this service tax on GTA service had also been taken. Subsequently, when the appellant removed those inputs as such, he reversed only the credit of excise duty' paid on inputs. The Department's contention is that on the removal of the goods as such, in addition to the credit of Central Excise Duty, the GTA service tax credit availed in respect of those inputs should also have been reversed. I find that on this very issue, the Tribunal in the case of Chitrakoot Steel & Power Ltd. v. CCE, Chennai (supra) has held that when the Cenvat availed inputs or capital goods are removed from the factory

of the assessee as such, sub-rule 3(5) provides for recovery of the amount of the Cenvat credit availed in respect of such inputs or capital goods and there is no provision to reverse the credit of service tax availed in respect of such goods or capital goods. Following the judgment of the Tribunal, I hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed."

11**.** It has been specifically mentioned in the memo of appeal by the Revenue that no appeal was preferred by it against the judgment relied upon by the Tribunal.

12. Be that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(l) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the Finance Act, 1994. Rule 3(5) of the Rules only talks about the Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5, on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added or substituted so as to give a particular meaning. Reference can be made to the observations of a Constitution Bench of Hon'ble the Supreme Court in ***Mathuram Agrwal* v. *State of Madhya Pradesh*, (1999) 8 SCC 667** :

> "The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. The subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."

13. In view of the above discussions and by respectfully following the judgment of Hon'ble High Court the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief as per law.

(Operative part of the order is pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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