CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70482 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-132-20-21 dated 02/06/2020 passed by Commissioner (Appeals) CGST, Noida)

M/s HCL Technologies Ltd. .....**Appellant**
(A-10-11, Sector-3, Noida)

VERSUS

Commissioner, Central Goods & Service Tax, Meerut
....**Respondent**

(Opposite CCS University, Mangal Pandey Nagar,
Meerut-250005)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70662/2024

DATE OF HEARING : 15.10.2024
DATE OF DECISION : 15.10.2024

P. K. CHOUDHARY:

The present appeal is arising out of Order-In-Appeal No. NOI-EXCUS-001-APP-132-2021 dated 02.06.2020 passed by Commissioner (Appeals), CGST, Noida.

2. The facts of the case in brief are that the Appellant is registered with the Department for providing 'Information Technology Software Service' and was paying service tax under reverse charge mechanism (RCM). The Appellant was availing and utilizing the Cenvat credit for discharging its output tax liability as per CENVAT Credit Rules, 2004[1]. Additionally, Appellant was also engaged, *inter alia*, in trading of goods viz.

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[1] CCR

computer hardware and network equipment, which is an exempted service and thus no Cenvat credit of Service Tax was availed by the Appellant in respect of the input services which were exclusively used for trading activity.

3. However, certain input services, on which Cenvat credit was availed, namely, rental, security and housekeeping, were used by the Appellant commonly for providing both taxable and exempted services, i.e. trading of goods. As no separate accounts were maintained by the Appellant, the Appellant was following the procedure of proportionate reversal of Cenvat Credit amount attributable to exempted service under Rule 6(3A) of the CCR, as per the formula prescribed therein, under due intimation to the Service Tax Range Office.

4. An Audit of the Appellant's records was conducted by the Department for the period from April 2013 to March 2014 by the Internal Audit Circle, Meerut Commissionerate. The Audit team raised an objection that the Appellant had short reversed an amount towards Cenvat credit under Rule 6(3)(b) of the CCR as the Appellant took into consideration only the credit on 'common input services' used both in taxable service and trading activity instead of accounting the 'total Cenvat credit'.

5. Based on such audit objections, a Show Cause Notice[2] No. 34/AUDIT-II/ADC/2016-17 dated 17.11.2016 was issued to the Appellant, proposing to recover the short-paid amount of Rs. 36,59,837/- under Rule 14 of the CENVAT Credit Rule, 2004 with interest on account of short-reversal of proportionate credit in terms of Rule 6(3A) of the Credit Rules, along with interest and penalty. The relevant part of the allegation in the show cause notice is as follows:

> *"5.6 Therefore, as per the above provisions the party is required to take in to account total Cenvat credit taken on input services during the financial year instead of credit taken on common input services and pay the differential amount on this account, along with applicable interest.*

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[2] SCN

> *5.7 The details of Cenvat credit taken for the year were ascertained as per the ER-1 returns filed by the party. On being asked the party also confirmed and provided such details, which showed that total credit taken in the year 2013-14 was to the tune of Rs. 136,74,80,096/-. Such details are relied and enclosed as RUD-6 with this notice. Thus, by taking the total amount of credit (i.e. Rs. 136,74,80,096/-), for the year 2013-14, for arriving at the amount payable under the said rule the amount payable under rule 6(3A) comes to Rs. 60,92,724/-. Out of the said amount an amount of Rs. 24,32,887/- has already been paid by the party. Therefore, an amount of Rs. 36,59,837/- is still required to be paid by the said party vide calculation summarized in Annexure-A attached. Therefore, it emerges that for the period 2013-14 the party have short paid an amount of Rs.36,59,837/- under rule 6(3A) of CCR, 2004 which is recoverable from them along with applicable interest."*

6. The reply to the SCN was filed by the Appellant, elaborating the rationale behind using common Cenvat Credit and also relied on Circular No. 868/6/2008-CX dated 09.05.2008 in support. It clarified that Rule 6 only imposes an obligation not to avail Cenvat credit on input services relating to provision of exempted services and manufacture of exempted goods.

7. After considering the defence reply filed by the Appellant, the Additional Commissioner, passed the Order-in-Original No. NOI-EXCUS-001-APP-132-2021 dated 28.02.2019 and upheld all the allegations proposed in respect of this issue in the SCN and confirmed the demand along with interest.

8. The Appeal filed by the Appellant dated 09.05.2019, was decided by the Commissioner (Appeals) vide Order-in-Appeal No. NOI-EXCUS-001-APP-132-2021 dated 02.06.2020, where it upheld the Order-in-Original on this issue. Being aggrieved, the Appellant has filed the present appeal before the Tribunal.

9. Heard both the sides and perused the appeal records.

10. Learned counsel for the Appellant has made the following submissions:-

a. In the present case, the only dispute is regarding the method of computation of proportionate credit to be reversed under Rule 6(3A) of the credit rules. Whether the CENVAT Credit, availed on the input services used exclusively in the rending of taxable output service, was required to be included in the numerator for apportioning the common credit between the exempted goods (trading) and taxable service.

b. This issue is no more *res integra* as it has been held that the CENVAT Credit, which pertains to input services exclusively used in rending of taxable service, is not required to be included in the "total CENVAT Credit" for apportionment between exempted services (trading of goods) and taxable service. It has been held that for apportionment of CENVAT Credit, only such credit which was availed on input service *used commonly in exempted service i.e. trading of goods and taxable service* is to be taken into consideration. For this purpose, reliance has been placed on the following decisions:

(i) **<u>E-CONNECT SOLUTIONS (P) LTD. Versus COMMR. OF C. EX. & CGST, UDAIPUR 2021 (376) E.L.T. 678 (Tri. - Del.)</u>**

17. ***The dispute in the appeal is regarding the interpretation of the term total Cenvat credit provided in the formula in Rule 6(3A)(b)(ii). According to the Department, the total Cenvat credit should include even those services used exclusively in taxable services, including the common service while according to the appellant it should include only common input services and services used in exempted services and not the services used exclusively in rendering taxable output service***.

18. It would be clear from a conjoint reading of sub-rules 6(1), (2) and (3) of Rule 6 that the total Cenvat credit for the purpose of formula under Rule 6(3A) is ***only total Cenvat credit of common input service and cannot include Cenvat credit on input service exclusively used for the manufacture of dutiable goods***.

19. This position is also clear from the underlying object of the amendment made in Rule 6(3A) of the Rules by Notification dated March 1, 2016, ***to consider only common input services and not total input service credit, for the purpose of computing the amount of reversal***.

20. Such an amendment was also clarified by the Tax Research Unit Circular dated February 29, 2016 to apply ***retrospectively*** inasmuch as the clarification clearly mentions that the provisions of Rule 6 providing for reversal of credit in respect of input services used in exempted services, is being redrafted with the objective to simplify and rationalize the same without altering the established principles of reversal of such credit. It has been further clarified at paragraph (iv) of the Circular that the purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted services and under no circumstances this part can be greater than the whole credit.

(ii) Commissioner v. Reliance Industries Ltd. — 2019 (28) G.S.T.L. 96 (Tribunal)

"**8.** From the reading of Rule 6(1), it is clear that only in respect of input or input service used in exempted goods are not allowed. That means input or input service used in taxable service/dutiable goods, Cenvat credit is allowed. Sub-rule (2) of Rule 6 is only as an option that if any input or input services used in exempted goods, credit should not be allowed and only with this intention some mechanisms for expunging Cenvat credit attributed only to the exempted goods are provided. As per clause (b)(ii) & (iv), it is clearly provided that entire credit in respect of receipt and use of inputs/input service is allowed when such input and input service is used in dutiable final products and taxable service.

However, nowhere in Rule 6 it is provided that the input or input service used in dutiable goods shall not be allowed. The Revenue is only interpreting the term "total Cenvat credit" provided under the formula. ***If the whole Rule 6(1), (2) and (3) is read harmoniously and conjointly, it is clear that "Total Cenvat Credit" for the purpose of formula under Rule 6(3A) is only total Cenvat credit of common input service and will not include the Cenvat credit on input/input service exclusively used for the manufacture of dutiable goods***. If the interpretation of the Revenue is accepted, then the Cenvat credit of part of input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of the Rule of Cenvat Credit Rules, 2004."

(iii) **M/s. ThyssenKrupp Industries India Pvt. Ltd. Vs. Commissioner of CE & ST, Pune-I [FINAL ORDER NO. A/85557-85558/2023 dated 10.02.2023]**

(iv) **M/s Honda Cars India Ltd., v. Commissioner of CGST &CE [Final Order 40540/ 2020]**

(v) **M/s Honda Cars India Limited v. Commissioner of Central Goods and Service Tax, Customs and Central Excise, Alwar [Final Order 51046/2021]**

(vi) **M/s Honda Cars India Ltd. v. Commissioner of GST & Central Excise [Final Order 40717/2021]**

c. That the following are **undisputed** facts:

i. that the Appellant has maintained separate records/accounts of input services which were exclusively used for providing taxable output service;

ii. that in respect of the input services which were utilized exclusively for trading activity, no credit was availed by the Appellant.

iii. That the common credit pertained to input services used commonly in dutiable and exempted services.

d. The underlying objective of Rule 6, Rule 6(3A) of the Credit Rules as amended vide **Notification No. 13/2016-CE (NT) dated 01.03.2016, effective from 01.04.2016**, by substituting Rule 6(3A) (b)(ii) of the Credit Rules, is to consider only common input services and not total input service credit, for the purpose of computing the amount of reversal as the amendment was clarificatory in nature the Board vide **TRU Circular No. 334/8/2016-TRU dated 29.02.2016** observed that the same would apply retrospectively

e. That the reliance placed in the impugned order by the Ld. Commissioner (Appeals) upon an interim order passed by the Tribunal in the case of ***Thyssenkrupp Industries (I) Pvt. Ltd. vs. Commissioner of Commissioner of Central Excise, Pune [Appeal No. E/86112/2014-Mum], 2014 (310) E.L.T. 317 (Tri. - Mumbai),*** for upholding the demand against the Appellant is misplaced as the Tribunal vide ***FINAL ORDER NO. A/85557-85558/2023 dated 10.02.2023 in the same appeal of M/s. ThyssenKrupp Industries India Pvt. Ltd. Vs. Commissioner of CE & ST, Pune-I*** set aside the demand.

f. In any case extended period of limitation is nor invokable in the given facts and circumstances as all the facts were disclosed to the department.

11. The Departmental Authorised Representative justified the impugned order and prayed that the appeal filed by the appellant being devoid of any merits may be dismissed.

12. We find that the only dispute involved in this appeal is regarding the method of computation of proportionate credit to be reversed under Rule 6(3A) of the credit rules. Whether the CENVAT Credit, availed on the input services used exclusively in the rending of taxable output service, was required to be included in the numerator for apportioning the common credit between the exempted goods (trading) and taxable service.

13. We also find that the same issue is no more res integra as the identical issue has been decided by the Tribunal in the following cases:

(a) **E-CONNECT SOLUTIONS (P) LTD. VERSUS COMMR. OF C. EX. & CGST, UDAIPUR 2021 (376) E.L.T. 678 (TRI. - DEL.)**

(b) **M/S. THYSSENKRUPP INDUSTRIES INDIA PVT. LTD. VS. COMMISSIONER OF CE & ST, PUNE-I [FINAL ORDER NO. A/85557-85558/2023 DATED 10.02.2023**

(c) **COMMISSIONER V. RELIANCE INDUSTRIES LTD. — 2019 (28) G.S.T.L. 96 (TRIBUNAL)**

(d) **M/S HONDA CARS INDIA LTD., V. COMMISSIONER OF CGST &CE [FINAL ORDER 40540/ 2020]**

(e) **M/S HONDA CARS INDIA LIMITED V. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, CUSTOMS AND CENTRAL EXCISE, ALWAR [FINAL ORDER 51046/2021]**

(f) **M/S HONDA CARS INDIA LTD. V. COMMISSIONER OF GST & CENTRAL EXCISE [FINAL ORDER 40717/2021]**

14. In view of above, we hold that the modality adopted by the Appellant for reversal of credit on proportionate basis is in accordance with the provisions of Rule 6(3A). Hence, the impugned order by upholding the demand on incorrect understanding of provision is erroneous and not sustainable.

15. As regards imposition of penalty and recovery of interest, we hold that since the demand of Cenvat Credit itself is not sustainable, penalty is not imposable and consequently, no interest is also recoverable. As the demand on merit has been set aside therefore the other submission on limitation has not been gone through.

16. In view of the above, we hold that the impugned order is not sustainable and is accordingly set aside. Appeal filed by the Appellant is allowed with consequential relief, if any.

(Operative part of the order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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