IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70106/2017-ST[SM]

(Arising out of Order-in-Appeal No. 122/ST/APPL/KNP/2015 dated 10/10/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

M/s S. B. Cars Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

<u>Appearance:</u>

Shri Dharmendra Srivastava, (CA), for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 30/01/2018

FINAL ORDER NO. **70833/2018**

Per: Anil Choudhary

The appellant is in appeal against the impugned order before the Tribunal, demanding duty on account of availment of Cenvat credit on input/input services used by them for manufacturing of excisable goods as well as trading activity as per Rule 6(3) of the Cenvat Credit Rules, 2004 for the period of 2008-2009 to 2010-2011.

2. The contention of the appellant is that prior to 1-4-2011, the activity of trading was not exempted service and the same has been brought into the definition of exempted services by Notification No. 3/2011-C.E. (N.T.),

dated 1-3-2011. Therefore, for the period prior to 1-4-2011, the provisions of Rule 6(3) (ibid) are not applicable to them. It is the contention of the ld. Counsel that for the period, post 1-4-2011, the appellant has availed proportionate Cenvat credit attributable to taxable services and the appellant have not availed any Cenvat credit for the services attributable to trading activity which is evident from the adjudication order. The only dispute made by the Revenue is that they are required to pay the amount as per Rule 6(3)(ii) of the Cenvat Credit Rules, 2004, which is not applicable to the facts of this case as the appellant have not availed any Cenvat credit attributable to trading activity.

3. On the other hand, the ld. AR reiterated the finding in the impugned order of the Tribunal.

4. Heard both the parties and considered the submissions.

5. Considering the facts and circumstance of the case, the issue is - whether the trading activity is an exempted services or not? That similar issue came up before this Tribunal in the case of *Orion Appliances Ltd.,* 2010 (19) S.T.R. 205 (Tri.-Ahmd.), wherein it has been held by this Tribunal that trading activity covered under Sales Tax Law and cannot be called the service, therefore, trading activity is not an exempted service. In these circumstances, I hold that for the period prior to 1-4-2011, the provisions of Rule 6(3) of Cenvat Credit Rules, 2004, are not applicable to the facts of this

case. For the period, post 1-4-2011, I find that the appellant has availed proportionate Cenvat credit attributable to their taxable service and they have not availed any Cenvat credit attributable to their trading activity.

6. In that circumstances, the impugned order is not sustainable in the eyes of law, therefore, the same is set aside. The appeal is allowed with consequential relief to the appellant, if any, in accordance with law.

(Dictated in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ansari