CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2262 of 2010

(Arising out of Order-in-Original No. 26 & 27/2010/ST dated 09.08.2010 passed by the Commissioner of Central Excise & Customs, Cochin Commissionerate, Cochin.)

M/s. Blue Star Limited,
Millennium Plaza,
MKK Nair Road,
Palarivattom,
Cochin.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs & Service Tax,
CR Buildings,
I.S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

Ms. Radhika, Advocate, for the Appellant

Mr. Maneesh Akhoury, Asst. Commissioner (AR), for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20454 /2024

DATE OF HEARING: 20.03.2024
DATE OF DECISION: 20.03.2024

PER : DR. D.M. MISRA

This appeal is filed against Order-in-Original No.26&27/2010ST dated 09.08.2010 passed by Commissioner of Central Excise & Customs, Cochin.

2. Briefly stated the facts of the case are that the appellant are engaged in rendering services such as Commissioning and Installation service, Management, Maintenance and Repair Services, Business Auxiliary Services and Transport Services. The appellant during the period 01.04.2008 to 30.09.2009 availed CENVAT Credit on various input services and utilised the credit availed for services rendered in domestic tariff area as well as to customers located in Special Economic Zone (SEZ). Since they have not maintained separate account of the CENVAT Credit availed on input services used for both taxable and exempted services that is cleared to Special Economic Zone (SEZ), two Show-Cause Notices were issued to them for contravention of Rule 6 of CENVAT Credit Rules, 2004 demanding, total credit of Rs.1,10,04,190/-. On adjudication the demands were confirmed with interest and penalty. Hence the present appeal.

3. The learned advocate for the appellant has submitted that rendering services to an Unit in SEZ Area amount to export in terms of Section 2(m) of the Special Economic Zone's Act, 2005 and not an exempted service as defined under Rule 2(e) of the CENVAT Credit Rules, 2004. She has submitted that Section 51 of the SEZ Act has an overriding effect on all other laws. Further, she has submitted that the show-cause notices for the period April 2008 to September 2008 is bared by limitation. Further she has submitted that the issue is no more *res-integra* being covered by the judgement of the Tribunal in the Case ***Sobha Developers Ltd Vs CST [(2010) TIOL 782] Sujana Metal Products Ltd Vs CCE [(2011) 273 ELT 112] and India Cements Ltd Vs CCE 2012 TIOL 954***. Further she submitted that since there is no misdeclaration, fraud or collusion therefore imposition of penalty is not justified.

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and peruse the records.

6. We find that the short issue involved in the present appeal for consideration is that whether credit availed on input services and utilised in providing output services supplied to SEZ unit be considered as an export service and accordingly covered under Rule 6(6) of the CENVAT Credit Rule, 2004. We find that the issue is no more *res-integra* and covered by the judgment of the Tribunal in **Sujana Meetal Products Ltd**. case, wherein, it is held that clearances made to SEZ be considered as an export service and covered under Rule 6(6) of the CENVAt Credit Rules, 2004. The said judgement has been upheld by the Hon'ble Andhra Pradesh High Court reported as 2016 (342) ELT A115, similar view has been expressed by this Tribunal in Sobha Developers case and Indian Cements Ltd. Case. Thus, following the aforesaid precedent the impugned order is devoid of merit and accordingly, set aside. Appeal is allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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