CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2.

Service Tax Appeal No. 25483 of 2013

[Arising out of the Order-in-Original No. 23-24/2012 ST dated 07.11.2012 passed by the Commissioner of Commissioner of Central Excise and Customs, Cochin, Commissionerate,]

M/s. Blue Star Ltd,
Millennium Plaza,
MKK Nair Road,
Palarivattom,
Cochin, Kerala **.......Appellant**

VERSUS

Commissioner of Customs,
Central Excise and Service Tax,
Cochin, Commissionerate,
C.R. Building,
I.S. Press Road, Cochin -18 **.....Respondent**

Appearance:

Ms. R. Radhika Sriranjini, Advocate for Appellant
Shri Neeraj Kumar, Authorized Representative for Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Pullela Nageswara Rao, Member (Technical)

Final Order No. 21094 of 2024

Date of Hearing: 30.04.2024
Date of Decision: 29.10.2024

Per: P.A. Augustian

The issue in the present appeal is whether the demand of Rs.52,84,142/- along with interest and imposition of penalties on the Cenvat Credit taken and utilized by the appellant during the period from 01.10.2009 to 30.09.2010 for payment of service tax is tenable and whether the confirmation of demand of an amount of Rs. 36,30,194/-

along with interest and imposition of penalties on the Cenvat Credit taken and utilized by Appellant during the period from 01.10.2010 to 31.03.2011 for payment of service is tenable.

2. The brief facts of the case are that the appellant is a registered service provider rendering services such as Erection, Commissioning or Installation services of Air Conditioning System and Deep Freezers, Management, Maintenance or Repair services, Business Auxiliary Services and Transport of Goods by Road services. The appellant has availed credit on input services such as telephone service, courier, maintenance and repair, travel agent service, advertisement service, security agent service. Since output service was rendered to both customers located in SEZ as well as in domestic area, the appellant had availed exemption from service tax as provided for in Notification No. 4/2004 dated 31.03.2004 in relation to services provided to units in SEZ. The appellant in the returns declared that they were providing both taxable and exempt services. Show Cause Notices were issued on the ground that; appellant provided taxable services and exempted services; common input services were availed for providing taxable and exempted services; however, they did not maintain separate books of accounts; hence violated the provisions of Rule 6 of CCR, 2004; due to their failure to comply with the conditions for availing such CENVAT credit. As per the impugned order, Adjudicating authority confirmed the demand of Rs. 52,84,142/- under section 73(2) for the period from 01.10.2009 to 30.09.2010 along with interest under Rule 14 of Cenvat Credit Rules, 2004 read with Section 75 of Finance Act, 1994. Further imposed penalties under section 76, 77 & 78. Further, confirmed the demand of Rs. 36,30,194/- for period from 01.10.2010 to 31.03.2011

along with interest under Rule 14 of Cenvat Credit Rules, 2004 read with section 75 of Finance Act, 1994. Further imposed penalties under section 76, 77 and Rule 15(1) of CCR, 2004. Aggrieved by the impugned order, present appeal is filed before this Tribunal.

3. When the Appeal came up for hearing, the Learned Counsel for the Appellant submitted that they were rendering the services to the unit in Special Economic Zone and it amounts to export in terms of Section 2(m) of the Special Economic Act, 2005 and not an exempted service as defined under Rule 2(e) of the CENVAT Credit Rules, 2004. Thus, they have rightly availed exemption under Notification No. 4/2004 dated 31.03.2004. Section 51 of SEZ Act provides that the act has an overriding effect on all other laws. The Learned Counsel further submitted that the issue is no more *res integra*, since it is squarely covered in Appellant's own case by this Tribunal in Appeal No. ST/21693/2015 vide Final Order No. 22793/2017 dated 15.11.2017. The learned counsel further submitted that this Tribunal as per the, *ibid* Final Order had held that:-

> *"4.1 He also submitted that this issue has been considered by various Benches of the Tribunal and it has been consistently held that there is no need to reverse any CENVAT credit of input and input services used in relation to providing of services to SEZ Unit/Developer of SEZ. In support of his submission, he relied upon the following decisions:*
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> *i. Tata Consulting Engineers Ltd. vs. CST, Mumbai: 2014 (33) STR 655 (Tri.-Mum.)*
>
> *ii. Sobha Developers Ltd. vs. CCE, Bangalore: 2012 (276) ELT 214"*

4.3 He also referred to Larger Bench decision in the case of Sterlite Industries (I) Ltd. Vs. CCE: 2005 (183) ELT 353 (Tri-LB) which was upheld by the Hon'ble Bombay High Court reported in 2009 (244) ELT A89

5. Therefore, by following the ratios of the above said decisions wherein it has been held that there is no requirement of reversal of CENVAT credit in relation to services provided to SEZ unit, I hold that denial of CENVAT credit to the tune of Rs. 1,70,754/- is set aside."

4. As regarding the denial of CENVAT credit for the period from 01.10.2010 to 31.03.2011, the Learned Counsel submitted that the definition of exempted services has been amended with effect from 01.04.2011 covering the activity of 'Trading' under the ambit of exempted services. Therefore Rule 6(3) of CENVAT Credit Rules, 2004 is not applicable and the utilization of CENVAT Credit cannot be restricted. Moreover, there is no methodology prescribed for computation or restriction of credit when trading as an activity is also carried out by the same entity, which provided taxable services, therefore Rule 6(3) cannot be applied. The Learned Counsel also submitted that the explanation has been added to Rule 6(3A) for the value of Trading Services. As per the explanation, the value of trading services shall be the difference between the sale price and purchase price of the goods. The explanation has been inserted vide Notification No. 13/2011 dated 31.03.2011. Therefore, prior to 01.04.2011, trading cannot be treated as exempted services.

5. Further, Learned Counsel relied on the decision in the matter of **M/s Sobha Developers Ltd Vs. CST (2010-TIOL-782),** wherein it is held that services rendered to units in Special Economic Zone by the units in DTA are to be treated as export of services. Similarly, in the

matter of **M/s Sujana Products Ltd Vs. CCE (2011 (273) E.L.T 112) and M/s India Cements Ltd Vs. CCE (2012-TIOL-984)**, it is held that clearance to SEZ Developers from DTA is treated as export and the application of the provisions of Cenvat Credit Rules for recovery of amounts on goods supplied to SEZ units in terms of Rule 6 of the Cenvat Credit Rules, 2004 does not arise. The Learned Counsel also relied on the decision of this Tribunal in Appellant's own case in Appeal No. ST/2262/2010 vide Final Order No. 20454/2024 dated 20.03.2004, where the appeal was allowed.

6. As regards the demand of Rs. 36,30,194/-, Learned Counsel further submits that the Appellant was maintaining separate books of accounts in respect of CENVAT credit attributable to taxable and exempted services. However, as per the SCN, entire credit availed and utilized was taken without considering the fact that CENVAT credit availed and utilized also pertains to taxable output services. Therefore, the demand is irregular and unsustainable. The Learned Counsel further produced the details and submitted that the due amount is Rs. 1,12,682/-as CENVAT credit, Rs. 2,254/- as Edn. Cess and Rs. 1,127/- as SHE cess. Thus, only an amount totaling to Rs. 1,16,063/- is attributable to CENVAT Credit on trading activity. As regards invoking the extended period of limitation and penalty, the Learned Counsel submitted that the dispute is on a legal interpretation in such cases as held in the matter of **Mudra Port and Special Economic Zone Vs. CCE (2009) 18 STT 314,** penalty cannot be imposed.

7. The Learned Authorised Representative (AR) reiterated the finding in the impugned order and submitted that even as per the decision of

this Tribunal in Appellant's own case, following the decision of the Hon'ble High Court of Madras in the matter of **M/s Ruchika Global Interlink Vs. CESTAT & CCE: 2017-TIOL-1235-HC-MAD-ST**, held that for trading activity, the Appellant is not entitled to CENVAT credit on service tax and it was denied, since it is related to trading activities carried out by the Appellant.

8. Heard both sides perused the record.

9. We find that as regards the issue of availment of CENVAT credit against goods supplied to Special Economic Zone, the issue is squarely covered by the decision of this Tribunal in Appellant's own case. As regards the CENVAT Credit claimed for the trading activity, the Learned Counsel has submitted that they have maintained separate accounts for the CENVAT credit attributable to the trading activity and as per the worksheet provided by the Appellant, CENVAT Credit attributable to the trading activity is only Rs. 1,16,063/-. However, the Adjudicating authority denied the entire CENVAT credit. Even if it is held that the Appellant is not eligible for the CENVAT credit for trading activity, once they are maintaining separate accounts, appropriate deduction can be considered only for the CENVAT credit availed for trading activity and not for the entire activity. As regarding penalty, the issue is squarely covered by the decision of the Tribunal and the judgments of Hon'ble High Courts, since the issue is regarding legal interpretation. Hence, penalty cannot be imposed for the alleged availment of ineligible CENVAT credit.

10. In view of the above discussions the appeal is partially allowed, the CENVAT credit denied for the period from 01.10.2009 to 30.09.2010 for rendering services to a unit in Special Economic Zone cannot be

considered as exempted service to deny the CENVAT credit. Considering the ratio of the decision of this Tribunal, the confirmation of demand of CENVAT credit of Rs. 52,84,142/- availed by the Appellant for the period from 01.10.2009 to 30.09.2010 is set aside. As regards the demand against ineligible CENVAT credit for the period from 01.10.2010 to 31.03.2011, the issue is remanded to original authority to verify the claim made by the Appellant regarding maintenance of separate accounts, in case the Appellant is able to satisfy that they have availed ineligible CENVAT credit only for Rs. 1,16,063/-, the demand can be confirmed only for the said amount.

11. In view of the above discussion, the appeal is partially allowed on the above terms, with consequential relief, if any as per law.

(Order pronounced in open court on 29.10.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar