CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/1252/2010-DB; ST/1721/2011; ST/1700/2012;
ST/3466/2012; & ST/21676/2014

[Arising out of :

(i) OIO No.16/2010/ST dt.15.03.2010;
(ii) OIO No.5/2011/ST dt.16.03.2011;
(iii) OIO No.10/2011/ST dt.21.3.2012;
(iv) OIO No.13/2012/ST dt.13.9.2012; and
(v) OIO No.COC-EXCUS-000-COM-85-13-14 dt.15.1.2014
(Review Order No.7/2014 dt.30.4.2014)

All orders are passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin.]

M/s. TRANS ASIAN SHIPPING SERVICES PVT LTD
TRANS ASIA CORPORATE PARK,
XIV/396-C, SEAPORT AIRPORT
ROAD, CHITTETHUKARA,
KAKKANAD, COCHIN.

Appellant(s)

The Commissioner of Central Excise, Customs and Service Tax
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Versus

The Commissioner of Central Excise, Customs and Service Tax
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

M/s. TRANS ASIAN SHIPPING SERVICES PVT LTD
TRANS ASIA CORPORATE PARK,
XIV/396-C, SEAPORT AIRPORT
ROAD, CHITTETHUKARA,
KAKKANAD, COCHIN.

Appearance:

Mr. Ranjit Mehta, Advocate
ECONOMIC LAWS PRACTICE ADVS
1502, DALAMAL TOWER ,
NARIMAN POINT,
MUMBAI – 400 021
M.H

For the Appellant

Dr. J. Harish,
Deputy Commissioner (AR)

For the Respondent

Date of Hearing: 05/09/2018
Date of Decision: 14/09/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON’BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21353 - 21357 /2018

PER: P. ANJANI KUMAR

M/s. Trans Asian Shipping Services Pvt. Ltd., the appellants are engaged in providing various services chargeable to service tax. On verification of records maintained by the appellants, Revenue found that the appellants are discharging both taxable and exempted services; the appellants availed CENVAT credit on various input services used by them in providing both taxable and exempted services; utilized the full amount of credit for payment of service tax on taxable services.

2. The Department contended that the appellants have violated the conditions of sub-rule (1) of Rule 6 of CENVAT Credit

Rules which provides that CENVAT credit shall not be allowed on such quantity of inputs service which is used in the provision of exempted services except in the circumstances mentioned in Rule 6(2). As per Rule 6(2), the provider of output service avails CENVAT credit in respect of any input service and provides such output services which are chargeable to tax as well as exempted services. The provider of output service shall maintain separate accounts for receipts, consumption and inventory of input service meant for use in providing output service and take CENVAT credit only on that quantity of input service which is intended for use in providing output service on which service tax is payable; Rule 6(3) provides that a provider of output service, opting not to maintain separate accounts, shall either pay an amount equal to 6% of the value of the exempted services or shall pay an amount equivalent to CENVAT credit attributable to input services used in or in relation for provision of exempted services subject to the conditions of procedure specified therein in sub-rule (3A).

2.1 The Department contended that the appellants have not maintained separate records during the period 2006-07 to 2011-12. Accordingly, the following show-cause notices were issued. Commissioner has confirmed all the show-cause notices except the one mentioned at Sl. No.5.

Appeal No.	SCN No.	OIO	Period
ST/1252/2010	No.36/2009-ST	OIO No.16/2010/ST dt.15.03.2010	May 2006 to March 2008
ST/1721/2011	No.156/2009-ST	OIO No.5/2011/ST dt..16.03.2011	April 2008 to March 2009
ST/1700/2012	No.03/2011-ST	OIO No.10/2011/ST dt.21.3.2012	April 2009 to March 2010
ST/3466/2012	Rs.203/2011-ST	OIO No.13/2012/ST dt.13.9.2012	1.4.2010 to 31.3.2011
ST/21676/2014	No.164/2012-ST	OIO No.COC-EXCUS-000-COM-85-13-14 dt.15.1.2014 (Review Order No.7/2014 dt.30.4.2014)	01.04.2011 to 31.03.2012

The appellants are in appeal against the four impugned orders as above and the Department is in appeal in respect of one order at Sl. No.5 above.

3. The appellants submitted in grounds of appeal that they have maintained separate records and the same has not been appreciated by the learned Commissioner in respect of four show-cause notices. The appellant maintained an accounting system that provides for a clear fabrication of (a) the taxes paid on input services used only for providing taxable services, for which full credit is availed; (b) the taxes paid on input services specified in Rule 6(5) of CENVAT Credit Rules, for which full credit is availed; (c) taxes paid on input services utilized for providing both taxable as well as exempted services, for which the credit availed is arrived on a proportionate basis i.e., ratio of the taxable turnover to the total turnover from exempted as well as

taxable services. Further, no tax credit is availed in relation to the input services that are utilized for provision of exempted services and the same are written off/expensed to the Profit and Loss Account of the applicant. There being maintenance of separate accounts in respect of receipt and consumption of input services used by the appellant in the rendition of taxable and exempted services, a declaration to this effect has also been made by the appellant in the ST-3 returns filed for the respective periods. The learned Commissioner failed to appreciate that the CENVAT Credit Rules do not prescribe the exact manner/nature in which separate accounts are required to be maintained. They have relied upon the following cases:

- ***Esab India Ltd. vs. CCE, Kolkata: 2009 (243) ELT 429 (Tri.-Kol.)***
- ***Hindustan Eng. and Industries Ltd.: 2009 (244) ELT 399 (Tri.-Kol.)***

3.1 The learned Commissioner was required to ascertain whether the appellant was maintaining separate accounts in substantiating compliance with the requirement of Rule 6(2) of CENVAT Credit Rules as held in ***Kaleesuwari Refinery Pvt. Ltd.: 2007 (220) ELT 335***. The impugned order did not deal with the totality of evidences provided by the applicant to substantiate that they maintained separate accounts in terms of Rule 6(2) of CENVAT Credit Rules. The appellants submitted that they have been reversed the credit at the end of the month and as held by the Hon'ble Supreme Court in the case of ***Chandrapur Magnet Wires Pvt. Ltd.: 1996 (81) ELT 3 (SC)*** credit reversed is as good as credit not taken. The appellants submitted that they have exercised option to maintain separate accounts.

3.2 As regards input services used in the provision of output services taxable as well as exempted as required under Rule 6(1) of (2) of CENVAT Credit Rules, the applicant cannot be directed to follow the provisions of Rule 6(3) of CENVAT Credit Rules. They placed reliance on ***Magtech Mobilespares Pvt. Ltd.: 2006 (205) ELT 481 (Tri.-Mum.)*** and ***PSL Ltd. vs. CCE, Pondicherry: 2007 (220) ELT 510 (Tri.-Chennai)***.

4. The learned counsel for the appellants has submitted that they are a shipping company and are engaged in liner business in 18 countries and 56 ports all over the world. In India itself, there are seven branches. Being a company of that big size, it was incorrect on the part of the department to allege that they have not maintained proper records as prescribed under Rule 6. It is anybody's guess that at least for the internal purposes of the company, they are required to maintain records. The learned counsel submitted that they have internally given

detailed guidelines to their various branches on the maintenance of records for the purposes of CENVAT credit.

4.1 As per the guidelines, all expenses having service tax component are classified into three broad categories. Credit on services used exclusively for taxable services are referred as direct credit and 100% credit is availed on them. In the case of service tax credit on input services that may be used for providing both taxable and non-taxable services, proportionate credit based on previous financial year's turnover of taxable to the total turnover is to be used to write off the non-eligible credit.

4.2 As per the guidelines, on receipt of an invoice (where service tax charged therein), the service division was to be identified and thereafter, the extent to which credit may be taken or not taken was to be determined; in case credit is ineligible, it was to be charged to Profit and Loss Account. Service tax credit that cannot be taken was required to be expensed off in the books of accounts; details of invoices that have been charged for CENVAT credit were to be maintained in an excel file and list of eligible direct and indirect and non-eligible credit was to be maintained. Primary accounts are maintained at branches, the eligible credit should be taken in the service tax account. This should be bifurcated on the basis where the same is direct or indirect; the balances should periodically be transferred to the Head Office. All ineligible credit should be expensed off to the Profit and Loss account. The counsel submitted that in view of the above, it is seen that elaborate method of accounting has been fixed and followed till the branch level.

4.3 The counsel for the appellants has submitted that they have produced before the Commissioner a certificate from the Chartered Accountant certifying maintenance of CENVAT credit records and procedure adopted for bifurcation of input credit used for taxable and exempted services and reversal of CENVAT credit at the end of the month in respect of the exempted services.

4.4 In respect of the above show-cause notice No.164/2012-ST in appeal No.ST/21676/2014, the learned Commissioner has got confirmed the maintenance of separate accounts by the appellants. The learned Commissioner sought a clarification from the Jurisdictional Range Officer who has furnished a reply vide letter dated 26.11.2013 confirming the below:

a) The assessee is maintaining private accounts for CENVAT credit in their system.

b) They are not availing/utilizing any CENVAT Credit on input services exclusively meant for exempted services.

c) In their private accounts, they avail of the full amount of CENVAT credit and then subtract the whole credit on indirect expenses which are common for taxable and exempted services.

d) Only the net amount is shown in the ST-3 Returns as credit availed.

e) In their private accounts, the assessee has shown an amount of Rs.18,85,143/- as input service credit in respect of advertisement charges, professional charges, telephone charges, AMC etc., utilized for both taxable and exempted services, and that this amount does not figure in the credit availed as shown in the ST-3 Returns.

f) The net effect of this being that the input service credit in respect of input services utilized for both taxable and exempted services are not reflected in the net credit taken as shown in the ST-3 Returns.

4.5 The learned counsel submitted that in view of the above, it is clear that they are maintaining separate records and are not availing CENVAT credit in respect of inputs which are exclusively used for exempted services. A similar exercise could have been undertaken by the Commissioner in respect of other show-cause notices also, the same was not done. Going by the report of Range Officer as above and the Chartered Accountant certificate, the learned Commissioner has dropped the proceedings initiated. However, in respect of other four show-cause notices, the Commissioner has neither undertaken any exercise to verify the claim of the appellants nor has relied upon the Chartered Accountant certificates submitted by them in every case.

4.6 The appellant has submitted an extract containing the details of credit availed, reversed by him and submitted that the impugned order may be set aside.

5. The learned DR has reiterated the findings of OIOs and the grounds of appeal in respect of appeal No.ST/21676/2014.

6. We have heard both sides and perused the records. On going through the records of the case, it is seen that the learned Commissioner has not appreciated the evidence put forth by the appellant regarding the maintenance of separate accounts. In is on record that in respect of each of the appeals, the appellants have produced a Chartered Accountant certificate

which certifies the maintenance of accounts by the appellants. It is also on record that in respect of appeal No.ST/21676/2014 (wherein the Department is in appeal), the learned Commissioner has caused the verification report by the Range Officer and has come to the conclusion on the basis of the report that the appellants are maintaining separate records.

6.1 As submitted by the learned counsel for the appellants, we find that the appellants have issued guidelines for their internal accounting purposes regarding the credit to be availed in respect of services rendered. They are taking the credit on services which are used wholly in taxable services as direct credit and the credit used in exempted services is being written off in the Profit and Loss Account. In case of input services which are used in taxable as well as exempted services, they are making the reversals at the end of the month. In view of the above, it is evident that appellants have maintained separate records as required under CENVAT Credit Rules. They have produced Chartered Accountant certificates before the learned Commissioner, however, out of above five appeals, only in one case the Commissioner has caused a factual enquiry and has stopped the proceedings. It is not understood as to why such an enquiry was not conducted in respect of other show-cause notices. Understandably, the appellants are a big entity spread over different countries and different places in India as there is no prescribed manner for maintenance of records under CENVAT Credit Rules, the records maintained by the appellants have to be accepted as records for the purpose of observing the conditions of CENVAT Credit Rules. Moreover, we find that the Chartered Accountant has given a categorical certificate that the appellants are maintaining separate records and have been making reversals of the balance amounts at the end of every month.

6.2 As held by Hon'ble Supreme Court in the case of ***Chandrapur Magnet Wires Pvt. Ltd.*** (supra), reversal would amount to non-availment of credit. We also find that Rajasthan High Court in the case of ***CCE, Jaipur vs. Sanjay Engineering Industries: 2016 (43) STR 354 (Raj.)*** held that subsequent reversal of CENVAT credit amounts to a situation where no credit was taken. The Tribunal at para 10 has quoted from the Hon'ble Supreme Court's judgment in ***Chandrapur Magnet Wires Pvt. Ltd.*** (supra) which is reproduced as follows:

> *"6. The findings rendered by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. (supra), are clearly applicable to the present matters. In that case also, the case of the Department was that reversal of credit entries is not permitted by the rules. The assessee is not entitled to remove the copper wires without payment of duty since credit of the duty paid on the inputs*

> *used in the manufacture of copper wire had already been taken in accordance with Rule 57A. Once appropriate entries have been made in the register, there is no rule under which the process could be reversed. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. But, the Court's attention was drawn to the departmental circular according to which in a case where the manufacturer produces dutiable final products and also final goods which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. Based on this, the Court held that the manufacturer may take credit of duty paid on all the inputs used in the manu-facture of final products on which duty will have to be paid and in view of this clarification by the Department, the Court saw no reason that why the assessee should not make a debit entry in the credit account before removal of the exempted final product and hence, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. The Court, therefore, took the view that the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken the credit of the duty paid in the inputs used in manufacture of these goods. The ratio laid down in this decision is squarely applicable to the facts of the present case and maintenance of separate books of account at the initial stage cannot be considered to be a condition precedent for the purpose of claiming the benefit of exemption to the respondent-assessee."*

6.3 Therefore, in view of the above, we find that the appellants have maintained separate records and as such, there is force in the arguments made by learned counsel for the appellant-assessee. However, on going through the summary submitted by the counsel for the appellants, we find that there is an amount of Rs.29,24,565/- which remains to be reversed by them. Thus, this amount requires to be reversed along with interest. The credit being attributable to exempted services, the bifurcation of the same is as follows:

Appeal No.	Period	Reversal which will negate demand
ST/1252/2010	May 2006 to March 2008	Rs.14,29,064/-
ST/1721/2011	April 2008 to March 2009	Rs.5,81,009/-
ST/1700/2012	April 2009 to March 2010	Rs.3,54,607/-
ST/3466/2012	1.4.2010 to 31.3.2011	Rs.5,59,885/-
Total		Rs.29,24,565/-

7. In view of the above, we allow the appeals filed the appellants ST/1252/2010-DB; ST/1721/2011; ST/1700/2012; and ST/3466/2012; subject to payment of Rs.29,24,565/- along with interest by the appellants and reject the appeal No. ST/21676/2014 filed by the department.

(Order was pronounced in Open Court on **14.09.2018**.)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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