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

Appeal(s) Involved:

E/21187/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-043-2018-19 dated 27/04/2018 passed by Commissioner of Central Tax , BELGAUM (APPEALS)]

M/s. Vishwa Structrual Engineering Pvt Ltd
Plot No 57 Mundargi Industrial, Area 2nd Stage, Bangalore Road
BELLARY - 583102
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Belagavi Commissionerate
No. 71, Club Road
Belgavi - 590001
Karnataka

Respondent(s)

Appearance:

Mr. Subramanya, CA
SHEKAR & YATHISH
CHARTERED ACCOUNTANT
13/14, 28TH CROSS, 2ND MAIN ROAD,
JAYANAGAR 7TH BLOCK,
BANGALORE - 560082
KARNATAKA

For the Appellant

Mr. K.B.Nanaiah, AR

For the Respondent

Date of Hearing: 23/10/2018
Date of Decision: 23/10/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21644 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 27.04.2018 passed by the Commissioner (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of Structural Steel falling under Chapter 73 of CETA, 1985 and are availing CENVAT Credit facility under CENVAT Credit Rules, 2004. During the course of audit of the unit by the Department, it was noticed that the appellant apart from manufacturing activity is also engaged in trading activity from the same premises. They are availing and utilizing the CENVAT Credit of security service and Telephone services which are common input services for both manufacturing and trading of goods. The trading is an exempted service under Section 66D (e) of the Finance Act, 1994, and is covered under negative list. Further, it was also observed that the appellant has not maintained separate account in respect of inputs/input services used for dutiable and exempted service as per Rule 6(2) of CCR, 2004. The appellant also failed to pay the amount of 6% of the value of the exempted service as per Rule 6(3)(i) of CCR, 2004. On these allegations, a SCN dated 15.02.2016 was issued to recover an amount of Rs.3,48,963/-, for the period 2012-13 to December 2014, being the amount equal to 6% on the value of cost of goods sold, along with interest with proposal of penalty

under Rule 15(2) of CENVAT Credit Rules, 2004. After following the due process, the Deputy Commissioner vide Order-in-Original dated 07.04.2017 confirmed the demand and ordered for recovery for an amount Rs.3,48,963/- in terms of Rule 14 of the CCR, 2004 along with appropriate interest and also imposed equal penalty under Rule 15(2) of CCR, 2004. Aggrieved by the said order, the appellant filed an appeal before the Commissioner on the ground that option of 6% cannot be forced on the appellant whereas CCR has given three options to the appellant and further the amendment to Rule 6 vide Notification No. 13/2016 dated 01.03.2016 effective from 01.04.2016, providing the formula for reversal of credits, is retrospective in nature. Further, the stand of the appellant was that they have reversed the proportionate credit amounting to Rs.49,647/-.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellant has submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the impugned order is contrary to the binding judicial precedent. He also submitted that the Commissioner (A) has not considered the calculation submitted as

per Rule 6(3A) of CCR, 2004 and has forced the appellant to pay 6% by mis-interpreting the provisions of Rule 6 of CCR, 2004. He further submitted that CENVAT Credit gives three alternatives to reverse credit if separate books of accounts are not maintained and the rule nowhere specifies any default rule to be followed in case of non-maintenance of separate books of accounts. Learned counsel further submitted that as per their calculation, the total credit to be reversed is amounting to Rs.49,647/- which the appellants have reversed by exercising the option given under Rule 6(3A) which according to the appellant is perfectly in accordance with law. In support of his submission he relied upon the decision of Hon'ble Gujarat High Court in the case of ***Sh. Rama Multitech Ltd. Vs. UOI reported in 2011 (267) ELT 153 (Guj.)*** wherein it has been held that even if separate account has not been maintained, in view of the retrospective amendment by Finance Act, 2016, a manufacturer using common inputs in or in relation to manufacture of dutiable as well as exempted final product would be entitled to reverse the proportionate CENVAT Credit. Further, in the case of ***Mercedes Benz India (P) Ltd. Vs. CCE, Pune-I, 2015 (40) STR 381*** wherein it has been held that there was no provision in Rule 6(3) ibid that if assessee does not opt for any option at any particular time, then option under Rule 6(3)(i) ibid of payment of 5% of value of trades goods will automatically be applied.

5. On the other hand, the leaned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that Rule 6 gives three options to the appellant to reverse the credit and it is the option of the assessee to choose any option which is beneficial to him if he is unable to maintain separate books of accounts and demanding 6% of the value of exempted goods and services is not sustainable in law. Further, I find that the appellant has given the calculation in the ground of appeal that as per the appellant, the total amount credit to be reversed proportionately comes to Rs.49,647/- which he has already reversed and therefore, the demand of 6% on the value of exempted services is not tenable. In view of the judgment of the Gujarat High Court as well as the Mumbai Tribunal in the case of ***Mercedes Benz*** since the appellants have already reversed the proportionate CENVAT Credit on common input series which has not been considered by the authorities below therefore I am of the view that this needs to be remanded back to the original authority to

verify whether the appellant has reversed the proportionate credit as claimed by him as per Rule 6(3A) of the CCR, 2004. Consequently, I allow the appeal of the appellant by way of remand to the original authority for the purpose of quantification of the amount of proportionate credit to be reversed by the appellant. Hence, the appeal is allowed by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **23/10/2018**)

S.S GARG
JUDICIAL MEMBER

Parveen...