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

Appeal(s) Involved:

E/20211/2018-SM

[Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-104-17-18 dated 02/11/2017 passed by Commissioner of Central Tax , MYSORE (APPEALS)]

M/s. Kaynes Technology India Pvt. Ltd.
Plot No339, Hebbal Industrial Area, Mysore
MYSORE - 570011
KARNATAKA

Appellant(s)

Versus

COMMISSIONER OF CENTRAL TAX
Commissioner Of Central Tax,
Mysuru Commissionerate
No. S-1 & S2, Vinaya Marga
Siddhartha Nagar
Mysuru - 570011
Karnataka

Respondent(s)

Appearance:

Mr. B.VENUGOPAL, ADVOCATE
SWAMY ASSOCIATES
G-8, FORTUNA ICON, APARTMENTS,JODIDAR ASHWATHAPPA FARM, SAHAKARA NAGAR, BANGALORE 560 092

For the Appellant

Mr. M.Sharan, Asst. Commissioner, AR

For the Respondent

Date of Hearing: 28/12/2018
Date of Decision: 28/12/2018

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

Final Order No. 21947 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 02.11.2017 passed by the Commissioner (Appeals) whereby the Commissioner (A) has held that the appellant is

liable to reverse the amount of Rs.10,34,237/- being the credit availed on inputs used exclusively for exempted goods and also liable to pay interest and equivalent penalty for this amount as per the provisions of Section 15 of CCR read with Section 11AC of Central Excise Act; however, he has set aside the demand of Rs.5,53,204/-.

2. Briefly the facts of the present case are that the assessee was manufacturer of Populated printed circuit boards etc., and they had cleared Solar energy equipment and parts of Wind mill energy equipment which were exempted from payment of duty under Notification No. 06/2006 dated 01.03.2006 and 12/2012 dated 17.03.2012. They had opted to avail credit on inputs used in the manufacture of these exempted goods and pay an amount equal to 5%/6% as per Rule 6(3) of CCR. However, it was seen that they were using some of the inputs exclusively for the manufacture of exempted goods and during the period 2011-12 to 2013-14, they had availed CENVAT credit to the tune of Rs.47,78,848/-. As per the explanation II to Rule 6(3) credit shall not be allowed on inputs used exclusively in the manufacture of exempted goods. Notice dated 13.01.2015 was issued demanding payment of CENVAT credit of Rs.47,78,848/-. Further during the period from 01/2014 to 03/2014, they had not

paid 6% of the value of exempted goods since the option once exercised cannot be withdrawn before the end of the Financial Year. The payment of Rs.5,53,204/- was demanded in another notice dated 13.01.2015. After considering the reply of the assessee, the adjudicating authority confirmed the demand made in both the notices in full along with interest and penalty. Aggrieved by the Order-in-Original, the appellants filed appeal before the Commissioner who partially modified the Order-in-Original.

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

4. Learned counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and also the binding judicial precedents. He further submitted that the appellants have opted to pay 6% of the value of the exempted goods as per the option given under Rule 6(3)(i) since there was difficulty in maintaining separate accounts of the inputs used in exempted goods and have paid Rs.46,44828/-. He further submitted that once the appellants have discharged the obligation under Rule 6(3)(i) any insistence to maintain separate accounts is contrary to the objective under Rule 6(3). He further

submitted that the appellants have availed the total credit of Rs.56,79,065/- and subsequently they have paid the balance amount of Rs.10,34,237/- to set off the entire amount of CENVAT credit of Rs.56,79,065/- availed on the inputs used in or in relation to manufacture of exempted final product along with interest at applicable rate. He further submitted that they have not suppressed any facts and therefore, the imposition of penalty is not warranted. He further submitted that if the entire credit taken is reversed, it amounts to not taking credit. In support of his submission, he relied upon the following decisions:

(i) Taher Ali Indus & Projects Pvt. Ltd. Vs. Commr. of C.Ex., Hyderabad-III, 2006 (195) ELT 225 (Tri. Bang.).

(ii) PSL Ltd. Vs. Commr. of C.Ex., Pondicherry, 2007 (220) ELT 510 (Tri. Chennai).

(iii) Heideiberg Prominent Fluid Controls India P. Ltd. Vs. CCE & ST, Bangalore-III, 2015 (321) ELT 282 (Tri. Bang.)

5. On the other hand, the learned AR defended the impugned order and submitted that the appellants have wrongly availed the CENVAT credit on inputs which were exclusively used for exempted goods and therefore, they are liable to pay penalty.

In support of his submission, he relied upon the following decisions:

(i) Syngenta India Ltd. Vs. Commr. of C.Ex., Goa, 2018 (15) GSTL 286 (Tri. Mumbai).

(ii) Khalsa Engineering Pvt. Ltd. Vs. Commr. of C.Ex., Kolkata-IV, 2016 (342) ELT 245 (Tri. Kolkata).

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants have opted to pay 6% of the value of the exempted goods as per the option given under Rule 6(3)(i) because they are unable to maintain separate accounts relating to inputs used in the exempted goods. Further, I find that by following this option, they have paid the duty to the tune of Rs.46,44,828/- but the Department insisted to maintain the separate account which is contrary to the objective under Rule 6(3). Further, I find that the appellants have taken total credit of Rs.56,79,065 and in order to buy peace, he has further reversed Rs.10,34,237 along with interest; though, he was not required to pay the same. In the present case, the appellant is only challenging the imposition of penalty of Rs.10,34,237/-. Further, I find that in the case of ***Taher Ali Indus*** (supra), the Division Bench of this Tribunal has held in Para 6 as under:

"We have gone through the records of the case carefully. When a manufacturer uses common inputs in respect of dutiable and exempted products, normally he is expected to maintain separate accounts for receipt, consumption and inventory of the inputs. This is so because he could take credit only on the inputs intended for use in the manufacture of dutiable goods. This is as per Rule 6(2) of CENVAT Credit Rules, 2002. However, it is not always possible for a manufacturer to maintain separate accounts. Under these circumstances, the manufacturer need not maintain separate accounts, but he should pay 8% of the price of the exempted final products. This is as per Rule 6(3) of the CENVAT Credit Rules, 2002. A careful reading of Rule 6(3) shows that the manufacturer has the option not to maintain separate accounts. In other words, the manufacturer can chose not to maintain separate accounts and pay 8% of the price of exempted final products. When the manufacturer does that, he is perfectly complying with the CENVAT Credit Rules. In the present case, Revenue has seized certain private documents from the appellants and holds that they would be governed by CENVAT Credit Rules 6(2). In our view, this is not correct. When an option is given to the manufacturer, Revenue cannot force him to adopt a particular course. This will be against the CENVAT Credit Rules. Hence, we do not find much merit in the OIO. The same is set aside by allowing the appeal."

6.1 Similarly, the Tribunal in the case of PSL Ltd. (supra) has held in Para 4 as under:

"After giving careful consideration to the submissions, we note that the facts of this case are strikingly similar to those of Taher Ali Indus. & Projects Pvt. Ltd. (supra). The distinction which is sought to be drawn between the two cases by ld. SDR does not, in fact, exist. In both the cases, the parties were undertaking the same activity i.e. manufacture of pipes, as job work, out of raw material supplied by the Water Supply contractors and

clearance of such pipes, without payment of duty, to such contractors. In both the cases, the assessees also manufactured pipes on their own count, out of raw materials procured by them and cleared such pipes to independent buyers on payment of duty. Both the assessees reversed in their Cenvat accounts 8% of the sale price of the exempted goods under Rule 6(3)(b) without maintaining separate accounts. On these facts, it is not difficult to presume that, if Taher Ali Indus. & Projects Pvt. Ltd. were incapable of maintaining separate accounts, so were the present appellants. But this aspect, to our mind, seems to be irrelevant inasmuch as the scheme of Rule 6 provides two options viz. (a) one in which the manufacturer of dutiable and exempted goods may maintain separate accounts and avail Cenvat credit on. Only that quantity of inputs which is used in or in relation to manufacture of the dutiable products and (b) the other in which he may pay 8% of the sale price of the exempted final products after availing Cenvat credit on the entire quantity of inputs without maintaining separate accounts. Ld. Commissioner seems to have thought that only those manufacturers of dutiable and exempted final products who are incapable of maintaining separate accounts are allowed under Rule 6(3) to pay 8% of the price of the exempted final products without maintaining separate accounts. But the provisions do not seem to mean so. In the result, the decision cited by ld. Counsel remains as authority on the issue.

6.2 Further, I find that once the appellant has paid the amount as per Rule 6(3) of CCR, the Revenue cannot insist that the appellants should reverse the entire credit. Further, I find that the appellants in order to buy peace reverse the entire credit and also paid the interest on the remaining amount. In view of these circumstances, it was not justified to impose penalty

therefore I set aside the penalty by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **28/12/2018**)

S.S GARG
JUDICIAL MEMBER

Parveen...