CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 3177 of 2012

[Arising out of Order-in-Original No. 25/2012 dated 27/09/2012 passed by the Commissioner of Central Excise, Bangalore.]

M/s. TALLY SOLUTIONS PVT LTD AMR TECH PARK II, NO.23 & 24, HONGASANDRA HOSUR MAIN ROAD, BANGALORE - 560 068.	Appellant(s)

VERSUS

Commissioner of Central Excise POST BOX NO 5400, CR BUILDINGS, BANGALORE – 560 001. KARNATAKA	Respondent(s)

<u>Appearance:</u>

Mr. N. Anand, Advocate RAVI SHANKAR & CHANDER KUMAR, ADVOCATES 504, 4TH FLOOR, OXFORD TOWERS, 139, OLD AIRPORT ROAD, KODIHALLI, BANGALORE - 560 017. KARNATAKA	For the Appellant
Mr. M.K. Davindran, Superintendent (AR)	For the Respondent

Date of Hearing: 12/03/2020
Date of Decision:14/07/2020

CORAM:

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

<u>Final Order No. 20393/2020</u>

Per : P. ANJANI KUMAR

The appellants are registered for providing taxable output services since 2005. They have availed credit on various input services. They had accumulated a credit of Rs.2,01,80,704/- till November 2008 when they started manufacture and clearance of package software. They have utilized credit to the extent of Rs.1,59,77,335/- in terms of Rule 3(4) CCR, 2004 for payment of duty on the excisable goods cleared by them. Revenue objected to the utilization of credit availed on input service for clearance of excisable goods and issued a SCN dated 05.09.2011. Learned Commissioner confirmed the demand along with equal penalty under Section 11AC of CEA, 1944. Hence, this appeal.

2. Learned Senior Counsel, Sh. Ravishankar, appearing for the appellants submits that Revenue has erred in appreciating the provisions of Rules 2&3 of CCR, 2004 which provided for intersectoral CENVAT credit on goods and services; the amendment brought in CENVAT Scheme w.e.f. 10.09.2004 categorically permits cross-sectoral utilization of credit; this is also made evident by the Finance Minister in his speech; Apex Court held in K.P. Verghese, 1981 (131) ITR 594 (SC) that such speeches made are guides to interpretation of statutes to ascertain the intent of the legislature. He submits that in the following cases it was held that credit cannot be denied or restricted on the basis of one to one co-relation:

- *S.S. Engineers Vs CCE, 2015 (38) STR 614 (Tri. Mum.) affirmed by Bombay High Court in 2016 (42) STR 3 (Bom.)*
- *CCE Vs New Swadeshi Sugar Mills, 2015 (323) ELT 222 (SC) affirming the Tribunal's decision reported in 2005 (191) ELT 200 (Tri. Del.)*
- *CCE Vs GTL Infrastructure Ltd, 2019 (29) GSTL 650 (Bom.)*
- *CCE Vs National Engineering India Ltd, 2018 (16) GSTL 271 (Raj.)*
- *Entraco Power Systems Pvt. Ltd. Vs CCE, 2017 (3) GSTL 129 (Tri. Mum.)*
- *CCE Vs Graphite India Ltd, 2017 (3) GSTL 505 (Tri. Mum.)*
- *Secure Meters Ltd. Vs CCE, 2017 (3) GSTL 485 (Tri. Del.)*
- *CCE Vs Auro Spinning Mills, 2012 (279) ELT 349 (H.P.)*
- *Jyoti Structures Ltd. Vs CCE, 2012 (286) ELT 356 (Tri. Mum.)*
- *Sumita Tex Spin Pvt. Ltd. Vs CCE, 2015 (39) STR 502 (Tri. Ahmd.)*
- *CCE Vs Lakshmi Technology & Engineering Industries Ltd, 2011 (23) STR 265 (Tri. Che.)*

3. Learned Senior Counsel further submits that the appellants were regularly filing the Returns giving the details of CENVAT credit availed and utilized sector-wise and therefore, SCN issued on 05.09.2011 covering a period March 2009 to August 2009 is time barred; Commissioner's finding in the OIO that the services on which credit was availed cannot be considered as input services for manufacturing of excisable goods, is beyond the scope of the SCN.

4. Learned Authorized Representative for the Department reiterated the findings of the OIO and relies upon Transafe Services Ltd Vs CCE, Haldia 2017(3) GSTL 445 (Tri-Kol)

5. Heard both sides and perused the records of the case. As submitted by the learned Senior Counsel, the Finance Minister in his Budget Speech stated as follows:

> *148. There remains the service tax. I propose to take a major step towards integrating the tax on goods and services. Accordingly, I propose to extend credit of service tax and excise duty across goods and services. In order to neutralize the revenue impact of such extension, and keeping in mind the mean Cenvat rate, I propose to enhance the rate of service tax from 8 per cent to 10 per cent.*

6. We find that in terms of Rule 3(1) a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of

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(ix) The Service Tax leviable under Section 66 of the Finance Act

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Paid on

(i)--------

(ii) any input service received by the manufacture of final product or by the provider of output services on or after the 10th day of September 2004.

From these provisions, we find that manufacturer of excisable goods can take credit of CENVAT paid on input services and there is no such requirement for one to one co-relation and there is no bar on the utilization of CENVAT credit availed on input services for payment of tax on excisable goods manufactured and cleared.

7. We also find that this issue is already settled in favour of the appellants in various cases cited by the appellants. We find that the cases referred to are not exactly on the similar fact of circumstances. However, they decide the general principles that in respect of utilisation of credit there is no one to one correlation and cross utilisation of Credit is permissible clarification from 10.9.2004. CBEC vide Letter F. No. 381/23/2010/862 dated 30.03.2010, clarified that CENVAT credit on inputs, capital goods and input services which are used for manufacture of goods or for provision of services is available in a common pool and can be used for payment of Excise duty and/or Service Tax. Credit accumulated by the service provider or manufacturer on the input services availed as well as inputs is available for payment of excise duty or Service Tax. Any contra view taken would defeat the very scheme of credit. It has been held in numbers of cases that as far as the inputs or input services are availed on payment of duty and as long as they are capable of being used in the provision of service Tax and manufacture of excisable goods credit cannot be denied; there is no requirement of one to one correlation. We find that the case cited by Authorised Representative is on the issue of transfer of accumulated credit under Rule 10(1) of CCR, 2004 and hence the ratio is not applicable. We also find that Apex Court in the case Ramesh Foods Ltd. 2004 (174) ELT 310 SC held that there is no requirement of one-to-one co-relation in availment of CENVAT. Therefore, we find that the impugned order is not maintainable.

8. The appellants have vehemently fought on the issue of limitation. They pleaded that SCN was issued on 05.09.2011 whereas the normal period expired on 10.09.2010; the SCN was issued on the basis of the Audit of records maintained by the appellants; therefore, extended period cannot be invoked by alleging suppression and that they were also submitting/filing the Returns regularly. He relies upon the decisions in CCE Vs ZYG Pharma Pvt. Ltd. 2017 (358) ELT 101 (MP); CCE Vs Sanmar Speciality Chemicals Ltd, 2016 (43) STR 347 (Kar.); GAC Shipping (India) Pvt. Ltd. Vs CCE, 2017 (49) STR 242 (Tri. Bang.) and others. While disposing the Stay Petition vide Final Order No. 26467/2013 dated 08.07.2013 observed that prima facie there was no suppression of facts or mis-declaration on the part of the appellants. We also find that in view of the above, timely scrutiny of Returns by the Department would have shown that there is huge accumulated credit; Department was free to further investigate the matter and issue timely SCN. In view of the same, we find that the appellants have a strong case on limitation too and the SCN is barred by limitation. In the result, we are of the considered opinion that the impugned order does not survive on merits as well as limitation.

9. In view of the above, appeal is allowed.

(Order was pronounced in Open Court on **14/07/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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