

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**SINGLE MEMBER BENCH  
COURT NO. I**

**APPEAL NO. E/61374/2018**

[Arising out of Order-in-Appeal No. 53/CE/FBD/CGST-Appeal-Gurugram/SG/2017 dated 21.05.2018 passed by the Commissioner of Central Excise (Appeals), Haryana]

**Date of hearing/decision:** 30.11.2018

For approval and signature:

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

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**Ms F L Smidth Pvt. Ltd** : **Appellant(s)**

**VS**

**C.C.E. Ex and ST- Faridabad I** : **Respondent(s)**

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Appearance:

Present for the Appellant(s): Ms. Radhika Chandrasekhar (Advocate)

Present for the Respondent(s): Shri G.M. Sharma (AR)

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**FINAL ORDER NO.**

63493/2018

***Per : Ashok Jindal***

By way of impugned order, the appellant was directed to reverse Cenvat credit in terms of Rule 6 (3) of the Cenvat credit Rules, 2004, which pertains to the trading activity of the appellant.

2. Heard both sides.

3. Considering the fact that the nature of the trading activities is that the appellant is receiving orders from their customers and

directly sending the same to their suppliers, who deliver the goods directly to their customers and raising invoices in the name of the appellant, which in turn raise the invoices in the name of the customers. Therefore, in trading activity, it is the contention of the appellant that they have not used any service except consultancy charges, audit fee, lease line telephone charges, etc. Therefore, Cenvat credit with regards to these services, they have already proportionately reversed and for other services, they are not required to reverse Cenvat credit as they are not in relation to trading activity.

4. I find that the services of labour charges, security charges, freight inward, clearing and forwarding charges, repairs and maintenances of machinery and tools, raw material insurance charges, raw material inspection charges, air ticket for service engineers, royalty, etc. have no relation to the trading activity of the appellant. Therefore, on those services, the appellants are entitled to avail Cenvat credit and for the remaining services, namely, consultancy charges, audit fees and lease line telephone charges, these services are common services, which can be used by the appellant for their manufacturing as well as trading activity. Therefore, in these circumstances, the appellant is required to reverse Cenvat credit proportionately attributable to their activity and it is the contention of the appellant that they have reversed the Cenvat credit, which is required to be verified by the adjudicating authority. Therefore, by setting aside the impugned order, I remand

the matter back to the adjudicating authority to find out the fact whether the appellant has reversed the Cenvat credit proportionately attributable to the trading activity in relation to the consultancy charges, audit fees and lease line telephone charges and thereafter pass an appropriate order in accordance with law.

5. The appeal is disposed off by way of remand.

*(Order dictated and pronounced in the court)*

**Ashok Jindal**  
**Member (Judicial)**

*Kailash*