**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH AT CHENNAI**
**[COURT : Division Bench B1]**

**Appeal No.: ST/00645/2012**

[Arising out of Order-in-Original No. LTUC/264/2012-(C) dated 28.08.2012 passed by the Commissioner, Large Taxpayer Unit, Chennai]

**M/s. Sundaram Finance Ltd.,** **: Appellant**
No. 21, Patullas Road,
Chennai – 600 002

**Versus**

**The Commissioner of G.S.T. & Central Excise,** **: Respondent**
Chennai North Commissionerate

Appearance:-
Shri. P. C. Anand, Consultant
for the Appellant

Shri. K. Veerabhadra Reddy, ADC (AR)
for the Respondent

**CORAM:**
**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing: 04.12.2018

**Date of Pronouncement: 22.02.2019**

**Final Order No. 40358 / 2019**

**Per P. Dinesha :**

The appellants are engaged in financing purchase of commercial vehicles, cars, houses, etc. and were registered under the category of Banking & Other Financial Services, Business Auxiliary Service, Business Support Service, etc. It appeared to the

Department that the appellants while calculating the proportionate credit attributable to exempted services had not adopted the correct value of the taxable service "hypothecation and loan activity" in the numerator and denominator in the formula prescribed under Rule 6(3A) of the CENVAT Credit Rules (CCR), 2004.

2. Accordingly, Show Cause Notice dated 27.09.2011 was issued *inter alia* proposing recovery of an amount of Rs. 2,07,49,189/- with interest thereon and also imposition of penalty under various provisions of law. In the adjudication proceedings vide the impugned Order dated 28.08.2012, the adjudicating authority had noted that as per Notification No. 04/2006 dated 01.03.2006, 90% of the value of taxable service of the appellant in the instant matter was exempted from the whole of service tax leviable thereon; hence, 90% of the taxable services are exempt from the whole of service tax leviable. Therefore, the said 90% value would be rightly covered within the definition of "exempted services" for the purpose of Rule 2(e) of the CCR, 2004. Accordingly, the adjudicating authority held that the said value which does not form part of the taxable services subject to service tax, automatically form part of non-taxable/exempted services in the said formula and in consequence, the value of exempted services for the factor "E" and "F" on the

percentage will have to be worked out as proposed in the Show Cause Notice. Based on these findings, the adjudicating authority confirmed the demand of Rs. 2,07,49,189/- with interest thereon and also imposed penalties under Rule 15(1) of the CCR, 2004 and also penalty under Section 76 of the Finance Act, 1994. Hence, this appeal.

3. Today when the matter came up for hearing, Ld. Consultant Shri. P.C. Anand appearing for the appellant submitted that the very issue has been decided in ***their own case by CESTAT, Chennai in Final Order Nos. 42221-42222/2018 dated 10.08.2018*** in their favour. Ld. Consultant submitted that the said Final Order has concluded that there is no justification in considering the value of taxable service exempted while Notification 04/2006 could be included in the formula for determining the amount to be reversed.

4. *Per contra*, Ld. AR Shri. K. Veerabhadra Reddy takes us through the definition of "exempted services" under Rule 2(e) of the CCR, 2004 to contend that in the particular case, the service tax was exempted on 90% of the gross value and hence, the taxable service carried out by the appellants were exempted from the whole of service tax leviable thereon up to 90% of the gross value. He draws our attention to paragraph 8 of the Show Cause Notice which points

out that the appellant had paid service tax only on 10% of the gross value; that however for the purpose of working out proportionate credit on exempted services, they adopted the entire gross income from the said services including the exempted value, the value of taxable services under factor "F" in the prescribed formula, however excluding the very same amount from the value of exempted services under factor "E", namely, the numerator. Ld. AR submitted that the formula does not provide a 'pick-and-choose' proposition by the appellants; that there has to be consistency followed by the appellant in the manner of inclusion or non-inclusion of the said value.

5. Heard both sides.

6.1 The issue is with regard to the determination of the amount that has to be reversed by the appellants when common inputs/input services are used for providing output services. The appellants have maintained separate records with regard to the common inputs used for the exempted as well as taxable output services. They have intimated the Department with regard to the formula they are applying in order to reverse the Credit attributable to common input services used for exempted services. Rule 6(3A) provides for determining the amount that has to be reversed when such common inputs are used for exempted services as well as dutiable services.

6.2 The dispute in this case is with regard to the exemption given by Notification No. 04/2006 dated 01.03.2006 wherein 90% of the amount of interest received in granting loans and financing services is exempted. By such Notification, service tax is required to be paid on a value equal to 10% of the total amount representing interest; balance 90% thus enjoys exemption from payment of service tax. The Show Cause Notice has been issued alleging that the appellant has to consider the 90% which enjoys exemption from payment of service tax as exempted services and include this value for arriving at the amount that has to be reversed.

7. According to the appellants, the said 90% cannot be included in the category of exempted services because 10% of the interest amount suffers from service tax. Therefore, the services are not wholly exempted from service tax and cannot be considered as exempted services. We find substance in the said argument.

8.1 The definition of "exempted services" during the relevant period is reproduced below :

> *" 'exempted services' means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under Section 66 of the Finance Act."*

8.2 For Financial Leasing Services under Section 65(105)(zm), service tax is payable on a part of the value of such services and only 90% is exempted as per Notification No. 04/2006. Since service tax is payable on 10% of the value, it cannot be said that the services are wholly exempt from payment of service tax. The definition of exempted services uses the word "exempt from the whole of the service tax". The formula prescribed in Rule 6(3A) also uses the word "exempted services" and is not qualified by saying exempted services as well as that part of the services which are exempted. Therefore, for applying the formula, only those services which are wholly exempted from service tax can be included to indicate the value of exempted services. The said issue has been analyzed by the Tribunal in the ***appellant's own case vide Final Order No. 42221-42222/2018 dated 10.08.2018.***

9. On appreciation of facts, analyzing the issue as well as following the dictum laid down in the above case, we are of the view that Rule 6 (3) (A) (b) (iii) gives a formula to determine the amount attributable to the input services used in or in relation to manufacture of exempted goods or provision of exempted services. The same is denoted to be equal to E/F multiplied by G. It is also

defined thereunder that E stands for total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year; F stands for total value of taxable exempted services provided plus total value of dutiable and exempted goods manufactured and removed during the preceding financial year; and G denotes total CENVAT credit taken on input services during the month.

10. As far as the denominator (F) is concerned, there is no dispute between the parties but the only dispute is in the numerator (E). The Revenue wants to adopt the entire value of interest on loans in addition to the value of exempted services. The ratio of this Bench in the earlier order *(supra)* makes it clear that the Revenue is not justified in considering the portion of value of taxable service exempted in the formula for determining the amount to be reversed. The Notification *supra* exempts 90 per cent of the value of the taxable service forming or representing as interest. With this, the value of E in the above formula should be read as equal to declared exempted services 'plus' 90 per cent of value of interest on loans. The appellant has pleaded that it has reversed the Cenvat credit attributable to the exempted services, which ultimately matched with its ST-3 Returns.

11. There is no dispute that the appellant should get the benefit of Notification which exempts 90% as held in the earlier Order of this Bench. We respectfully agree with that and direct the assessing officer to follow the directions contained in the above Order to this extent. Having said that, the next question is on the taxability or otherwise of the balance 10%. When the Notification grants exemption to the extent of 90%, the only obvious conclusion is that the balance 10% should suffer tax and accordingly, tax liability is required to be requantified.

12. Taking note of the above submission, the assessing officer shall carry out the computation afresh and requantify the liability, if any, on the lines of the directions in the above paragraph and while doing so, he shall also consider the appellant's claim as to its reversal and then arrive at the proper liability, if any, in accordance with law after giving reasonable opportunity to the appellant.

13. The appeal is treated as allowed and partly remanded only to the limited extent as indicated above.

*(Pronounced in open court on **22.02.2019**)*

**(P Dinesha)**
Member (Judicial)

**(Madhu Mohan Damodhar)**
Member (Technical)

Sdd