

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.42449 of 2016

[Arising out of Order-in-Appeal No.CHN-SVTAX-000-APP-544-16-STA dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

M/s.Popular Vehicles and Services Pvt. Ltd.

Appellant

(Formerly Popular Vehicles and Services Ltd.)
Block J-22, Third Avenue,
Anna Nagar East,
Chennai 600 102

Vs

The Commissioner of GST & Central Excise

Respondent

Chennai Outer Commissionerate,
No.2045-I, Newry Towers,
2nd Avenue, Anna Nagar,
Chennai 600 040.

APPEARANCE:

Shri T.R. Ramesh, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 21.07.2022
Date of Pronouncement: 10.08.2022

FINAL ORDER No. 40287 / 2022

Brief facts of the case are that appellants are authorized dealers for sale of Automobiles and accessories of M/s.Maruthi Suzuki Ltd. and are registered with the service tax department. During the scrutiny of

records, it was noticed that appellant is engaged in promotional activities like advertising, display to promote M/s.Maruti Udyog Ltd. products. In addition, they also promote and market the insurance and the financial products of the Banks and Financial Institutions for which they are given a commission. On scrutiny of their cenvat accounts, input service invoices, ST-3 Returns etc. it was seen that appellant has availed cenvat credit of service tax paid on various input services. They have availed credit of service tax paid on common input services used for rendering taxable services as well as trading (exempted service). As the appellant did not maintain separate accounts, they had to reverse the credit or pay an amount equal to 6% of the value of exempted services. The appellant neither paid the amount equal to 6% of value of exempted service nor did they reverse the credit attributable to input services in terms of Rule 6 (3A) of CCR 2004. Show cause notice was issued proposing to recover the wrongly availed credit along with interest and for imposing penalties. After due process of law, original authority disallowed the credit of Rs.7,31,362/- being the wrongly availed credit for the period October 2009 to September 2010 along with interest and imposed penalty. The said order was appealed before the Commissioner (Appeals) who upheld the same. Hence this appeal.

2. On behalf of the appellant, Ld. Counsel Shri T.R.Ramesh appeared and argued the matter. He submitted that appellant in fact

had reversed the credit and there is no further reversal required. He adverted to para 3.9 of the OIO and submitted that though the appellant had put forward the contention that they had reversed an amount of Rs.14,41,435/- on 31.03.2021, the same has not been taken into account by the authorities below. He submitted that in appellant's own case for a different period the very same issue came up for hearing and the Tribunal had considered the reversal made by the appellant and held that appellant had reversed sufficient amount. Though the said order was for a different period, it can be seen from the discussions in the order that the appellant has reversed sufficient credit. He prayed that the appeal may be allowed.

3. Ld. A.R Shri Arul C. Durairaj appeared for the department.

4. Heard both sides.

5. It is brought out from the records that the Tribunal vide Final Order No.41834/2016 dt. 13.10.2016 had remanded the matter along with other connected appeals for a different period to the adjudicating authority for *de novo* adjudication. In such *de novo* adjudication, the original authority vide Order-in-Original No.8/2020 dt. 04.12.2020 held that appellant has wrongly availed credit of Rs.3,70,181/- for the period October 2010 to September 2011 and confirmed the demand to this extent along with interest and imposed penalty of Rs.37,000/-. It

is brought out that appellant has reversed credit of Rs.14,41,435/- which is reflected in their ST returns for the period October 2010 to March 2011. Though the closing balance in the returns show as Rs.14,41,435/-, the balance noted in the ST-3 returns for the period April 2011 to September 2011 shows the opening balance as Nil. This would show that the appellant has not carried forward the cenvat credit which is sufficient evidence to show that the appellant has reversed the sum for the disputed period. The details of the demand made alleging wrongly availed cenvat credit has overlapped to the different periods after remand of the matter to the adjudicating authority and thereafter when the appeal came up before the Commissioner (Appeals). Ld. A.R was fair enough to submit the details of calculation of the disputed cenvat credit and the reversals made by the appellant in the earlier case of the appellant (Final Order No.40128/2022 dt. 31.03.2022 in ST Appeal No.40800/2021). The discussions made in para-7 of the said order is noteworthy and is reproduced as under :

“7. The learned AR Shri Arul C. Durairaj appeared for the respondent. Since the dispute in this appeal is with regard to calculation of the amount of credit that has to be reversed by the appellant, the learned AR has taken effort to bring out the details of the credit availed as well as the amount reversed by the appellant during the disputed period. The details given by the learned AR are as under:-

“The abstract of CENVAT credit availed during the period of dispute is split up return wise for ease of understanding as the CENVAT figures reflected in the return for the two periods is different:

2. Return Period October 2010 to March 2011: (Reference SCN Annexure I & II page 51 & 52)

Month	Taxable Value (T1)	Exempted value (E1)	Cenvat Credit as per ST3 (C1)
Oct-10	5,99,014.00	10,86,98,156.00	64,374.00
Nov-10	7,48,417.00	9,79,84,807.00	68,299.00
Dec-10	19,80,412.00	22,46,04,832.00	65,498.00
Jan-11	9,42,790.00	7,55,63,985.00	62,666.00
Feb-11	10,67,079.00	9,57,25,298.00	78,910.00
Mar-11	28,88,057.00	10,13,42,746.00	83,269.00
Total	82,25,769.00	70,39,19,824.00	4,23,016.00
Less Rule 6(5) credits of Rs. 46,387			3,76,629.00

The CENVAT Credit (C1) as shown in the SCN includes an amount of Rs. 46,387 relating to credits covered by Rule 6(5) of the CCR, 2004 for which reversal was not required prior to April 2011. Therefore, CENVAT Credit to be taken for calculating reversal for this return should be restricted to Rs. 3,76,629 (which was done as per para 17 of O-in-O page 30)

3. Return Period April 2011 to September 2011 (Reference SCN Annexure I & II page 51 & 52); Assessee’s reply page 43 and O-in-O para 16.6 page 30)

Month	Taxable Value (T2)	Exempted value (E2)	Actual Cenvat Credit (C2)	Reversal under Rule 6(3) (R2)	CENVAT Shown as taken in ST3 (NC2)
Apr-11	27,799.00	1,39,16,056.00	80,872.00	70,359.00	10,513.00
May-11	7,58,343.00	1,11,12,720.00	79,682.00	69,323.00	10,359.00
Jun-11	8,82,937.00	1,10,10,080.00	80,210.00	69,783.00	10,427.00
Jul-11	10,23,257.00	73,11,576.00	81,328.00	70,755.00	10,573.00
Aug-11	8,08,097.00	97,64,872.00	76,756.00	66,778.00	9,978.00
Sep-11	16,19,968.00	91,31,816.00	75,343.00	65,549.00	9,794.00
Total	51,20,401.00	6,22,47,120.00	4,74,191.00	4,12,547.00	61,644.00

The correct calculation of the demand for the entire period of dispute should have been as follows:

(E1+E2) x (C1+C2)

(T1+E1+T2+E2)

= (70,39,19,824 + 6,22,47,120) x (3,76,629 + 4,74,191)

(82,25,769 + 70,39,19,824+51,20,401 + 6,22,47,120)

Which will result in Rs. 8,36,253 as amount quantified to be reversed under Rule 6(3)
As an amount of Rs. 4,12,547 had already been reversed, the balance payable would have been Rs. 4,23,706.

However, the show cause notice demand was calculated on the basis of figure at Column NC2 and thereby the demand was wrongly arrived as follows:

$$\frac{(E1+E2) \times (C1+NC2)}{(T1+E1+T2+E2)} = \frac{(70,39,19,824+6,22,47,120) \times (4,23,016+61,644)}{(82,25,769 + 70,39,19,824+51,20,401+6,22,47,120)}$$

And thus, resulted in an amount of Rs. 4,76,362 as amount required to be reversed under Rule 6(3)

4. During adjudication, the demands were calculated over different periods. Firstly, in paras 16.4 to 16.8 the demand for the period April 2011 to September 2011:

For this period the CENVAT figure was taken as NC2, thereby arriving at a reversal liability of Rs. 56,961 (paras 16.4 to 16.8 of the O-in-O) - page 30. If the figure at C2 had been taken, the liability would have been arrived at Rs. 4,38,149 out of which an amount of Rs. 4,12,547 had already been reversed leaving a balance of Rs. 25,602

Calculation as per O-in-O		Correct Calculation	
E2 x C2	6,22,47,120 x 61,644	E2 x C2	6,22,47,120 x 4,74,191
-----	-----	-----	-----
T2 + E2	51,20,401 + 6,22,47,120 =56,961	T2 + E2	51,20,401 + 6,22,47,120 =4,38,149

However, the adjudicating authority has, on the basis of the incorrect calculation, concluded that there is excess reversal for this period. This finding has not been challenged. Therefore, for the purposes of the present appeal there is no demand for this period.

5. In para 17 of the O-in-O the adjudicating authority has determined revised liability for the period October 2010 to September 2011, which is the entire period of dispute. The values of taxable and exempted services over the entire period of dispute were correctly taken. However, the CENVAT credit taken was the figure at C1 (October 2010 to March 2011) and the reversal liability of Rs. 3,70,181 was arrived at. If the CENVAT credit for the entire period (C1 + C2) (3,76,629 + 4,74,191 = 8,50,820) had been taken the total reversal amount would have come to Rs. 8,36,253 as demonstrated in para 3. However, having calculated the liability for the period April 2011 to September 2011 and found that no further payment was due for this period, the proper course should have been to quantify the liability for the period October 2010 to March 2011. The values of taxable and exempted service should then have been restricted to the period October 2010 to March 2011 which would have been as follows:

$$\begin{array}{rcl} E1 \times C1 & 70,39,19,824 \times 3,76,629 & \\ \hline E1 + T1 & 70,39,19,824 + 82,25,769 & = \text{Rs. 3,72,279} \end{array}$$

6. Therefore, neither the SCN where the demand was calculated over the entire period of dispute nor the O-in-O where the demand has been calculated over different periods have quantified at the demand correctly.

7. The appellant has not carried forward the CENVAT credit closing balance of Rs. 14,41,435 in the return for the period ending March 2011 to

the return for the period April to October 2011. This is clearly an omission and not a conscious decision to reverse disputed credit. However, the fact of this omission extinguishes the credit reversal liability for the period October 2010 to March 2011.”

6. The returns filed by the appellants establish that they have not carried forward the credit from the previous period. Ld. A.R has taken efforts to explain the details of the demand made by the department. As the appellants have reversed the credit their liability under Rule 6 (3) of CCR 2004 stands extinguished. The impugned order therefore cannot sustain and requires to be set aside which I hereby do so. The appeal is allowed with consequential relief if any, as per law.

(Pronounced in court on 10.08.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)