IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40709 of 2014

(Arising out of Order-in-Appeal No. 8/2014 dated 8.1.2014 passed by the Commissioner of Central Excise and Service Tax, LTU (Appeals), Chennai)

M/s. Alstom T and D India Ltd. **Appellant**
19/1, GST Road, Pallavaram
Chennai – 600 043.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri Joseph Prabhakar, Advocate for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41099/2024

Date of Hearing : 06.05.2024
Date of Decision: 21.08.2024

Per M. Ajit Kumar,

This appeal is filed by the appellant M/s. Alstom T&D India Ltd. against Order in Appeal No. 8/2014 dated 8.1.2014 passed by the Commissioner (Appeals), LTU, Chennai (impugned order).

2. Brief facts of the case are that on being pointed out by internal audit, the appellant had reversed the proportional service tax input CENVAT credit of Rs.39,71,696/- on trading activity. The appellant also reversed the credit of other input services amounting to Rs.98,578/-, totalling to Rs.40,70,274/- along with interest of Rs.4,45,146/- under protest. Subsequently, the appellants filed a refund claim for the

amount which was reversed. Show Cause Notice dated 1.2.2012 was issued proposing to reject the refund claim. The refund sanctioning authority after due process of law rejected the refund claim on the ground that the input services were not used directly or indirectly in their manufacturing activity and that the said services do not figure in the exhaustive list of inclusive input services as per Rule 2(l) of CENVAT Credit Rules, 2004. Aggrieved by the said order, the appellant preferred appeal before Commissioner (Appeals) who vide the order impugned herein rejected the appeal filed by the appellant. Hence the appellants are now before the Tribunal.

3. Shri Joseph Prabhakar, Ld. Advocate appeared for the appellant and Shri Harendra Singh Pal, Ld. Authorized Representative appeared for the respondent-department.

3.1 The Ld. Counsel submitted that they had filed a refund claim for CENVAT credit on trading activities and other input services along with interest paid under protest for the period April 2009 to November 2010 as below.

S. No.	Refund claim particulars	Amount (Rs.)
1.	Proportionate CENVAT credit relating to trading	39,79,616
2.	CENVAT credit on various input services	98,578
3.	Interest	4,45,146
	Total	45,23,340

Thereafter, a Show Cause Notice dated 1.2.2012 was issued directing the appellant to justify the refund claim. He relied on the decision of the Tribunal in the case of **M/s. Kiran Motors Ltd. Vs. CCE, Surat** reported in 2012-TIOL-265-CESTAT-AHM which held that input credit is available on trading activity also. Further Notification No. 3/2011-CE (NT) dated 1.3.2011 which amended the definition of 'exemption services' as per Rule 2(e) of CENVAT Credit Rules, 2004, specifically inserted an explanation that exempted services would include 'trading' and the restriction on availing CENVAT credit on trading activity arises only from 1.4.2011. Since the amendment is prospective and the period in dispute is prior to 1.4.2011, the ratio of the various High Court decisions relied on by the appellants would squarely apply to the case on hand. In the circumstances the interest amount is also liable to be refunded to the appellants. He prayed for favourable orders.

4. The Ld. AR reiterated the findings in the impugned order.

5. Heard both sides. We find that the issue is not of retrospectivity of an amendment to the Rule or otherwise, as stated by the appellant, but whether the appellant could claim input-service tax credit on an output which is neither a service nor excisable goods. A Coordinate Bench of this Tribunal examined the issue in detail in **M/s Woodward Governor India Limited Vs Commissioner of Central Excise-Delhi-IV** [FINAL ORDER NO.60132-60135/2023, dated: 12.05.2023]. Relevant portion is extracted below;

> " 7. We find that the issue involved had a chequered history of litigation. Different Benches of Tribunal have decided for or against the Revenue as cited above. We find that Hon'ble Supreme Court in the case of Lally Automobiles Ltd. Vs Commissioner, 2019 (24) GSTL J115 (SC) has set to rest the controversy by deciding that CENVAT credit is not admissible on input services attributable to trading activity. This was affirmation of the Order passed in the same case by the Delhi Bench of Tribunal as well as the Hon'ble Delhi High Court. We find that the Tribunal in this case 2018 (10) GSTL 310 (Tri. Del.)
> have held that:
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> *6. We have heard both the sides and perused appeal records. The admitted facts are that the appellants availed Cenvat credit on input services and they had considerable turnover and income in trading activities. It is also admitted that the services on which credit have been availed are partly relatable to trading activities also. We note that the appellants contested the reversal of credit to a proportionate*

extent on the ground that trading is not an exempted service prior to the insertion of explanation and as such the provisions of Rule 6(3) will not apply. One main aspect is missed by the appellant in such argument. The case of the appellant is that trading cannot be considered as exempted service. It is clear that trading is not a taxable service also. In other words, trading is an activity which is not covered under the scope of Cenvat Credit Rules, 2004. The appellants should not have availed any credit on input services when such services are attributable to an activity which is not at all taxable and hence not covered by the scope of Cenvat Credit Rules, 2004.

7. A deemed fiction is apparently created by naming „trading" as an exempted service by way of explanation in Rule 2 of Cenvat Credit Rule w.e.f. 01.04.2011. We find prior to creation of such fiction, there is no scope at all even to consider the trading activity to be covered under the credit scheme. After the explanation, the position is more clear to the effect that the trading activity can be considered as an exempted service for the operation of scheme under Cenvat Credit Rules. In other words, prior to that clarification, in the absence of such explanation, trading is not at all covered by the credit scheme. Accordingly, we find the appellants should not have availed credit for common input services which are used for taxable output service as well as trading activity, as it is imperative to identify and reverse that amount of credit attributable to the trading activity. We find no infirmity in the findings of the original authority on merit or on quantification. On an appeal filed by the appellant, Hon'ble High Court of Delhi while deciding the above case in 2018 (17) GSTL 422 (Del) held that:

16. Therefore, the issue is whether the assessee could claim the credit on input which were not services. Input credits can be used for payment of service on output service provided such services are used to provide output services. Undoubtedly, there cannot be an exact correlation between one kind of input and corresponding. That is the reason the Rules cover situations where assessees provide both exempted and taxable services. Wherever someone undertakes activities that cannot be called a service or which is not "manufacture", that activity goes out of the purview of both Central Excise Act as well as Finance Act, 1994. In such cases, an assessee would be ineligible for claiming input-service tax credit on an output which is neither a service nor excisable goods. There is no provision to cover situations where an assessee is providing a taxable service and is undertaking another activity which is neither a service nor manufacture. In such a situation, the only correct legal position appears to be that it is for the assessee to segregate the quantum of input service attributable to trading activity and exclude the same from the records maintained for availing credit. This cannot be done in advance as it may not be possible to foretell the quantum of trading activity as compared with taxable activity. The obvious solution would be to ensure that once in a quarter or once in a six months, the quantum of input service tax credit attributed to trading

> *activities according to standard accounting principles is deducted and the balance only availed for the purpose of payment of Service tax of output service.*
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> 8. Going by the ratio of the judgment above, we find that before 01.04.2011 it was not open to the appellants to avail CENVAT credit paid on input services and utilized for provision of exempted services or trading goods. We find that as has been held by the Tribunal in the Lally Automobiles case (supra) exempted goods were beyond the scope of CENVAT credit and therefore, the logic that the credit is not admissible only after 01.04.2011, when the same was specifically mentioned in the Rules, is farfetched and misplaced. The appellants have relied upon the Tribunal's judgment in the case of Adani Energy Ltd. (supra). On going through the case, we find that in that case the judgment in the case of Lally Automobiles (supra) was not discussed and it appears that the rival parties have not brought the same to the notice of the Bench. To that extent, we find that the judgment cannot be relied upon. Lally Automobiles case being affirmed by the Hon'ble Apex Court becomes the law of the land and requires to be followed. We do so. Therefore, we do not find any infirmity in the findings of the adjudicating authority as far as the denial of the CENVAT credit on input services used in trading is concerned."

This being so the period during which the input credit was taken cannot find shelter from credit reversal, just because as per the appellants averments, Notification No. 3/2011-CE (NT) dated 1.3.2011 did not considered 'trading' as an exempted service prior to the introduction of explanation, in Rule 2 of Rules, w.e.f. 01.04.2011 and the notification did not have retrospective effect. The fact whether 'trading' is an exempted service or not is not a relevant consideration, so long as the output for which the input credit is taken, itself is neither a service nor excisable goods.

7. As stated in the judgment extracted above, 'Lally Automobiles' case being affirmed by the Hon'ble Apex Court has become the law of the land and requires to be followed. Judgments cited by the appellant are hence of no avail. This being so the order of the Ld. Commissioner (Appeal) rejecting the refund claim and approving the reversal of the

proportional service tax input credit taken on trading activity cannot be faulted.

8. As regards the issue relating to CENVAT credit taken on House Keeping Services, Courier Services, Hospitality services and Car hiring services, we find that the impugned period i.e. December 2010 to January 2011 is prior to the changes brought in by Notification No. 3/2011 dated 1.3.2011, to the definition of 'Input service' under Rule 2 (l) of the Cenvat Credit Rules, 2004 with effect from 01/04/2011. Prior to the said date the definition of "input services" had a wide ambit as it included the phrase "activities relating to business". The definition of input services allowed all credit on services used for clearance of final products up to the place of removal. Thus, almost all the services were covered within the definition of "input services". Restriction on input used for personal use or consumption of employees etc. came about only after 01/04/2011. There is nothing to show that the said services were not used for the provision of output service. Further considering the low tax amount involved in these appeals and the appellant being prima facie eligible for the refund it would be in order, to grant such benefits without straining the plain words of the section at this distant date.

9. As regards the demand for statutory interest the same would be payable on the credit utilized and reversed towards trading activity only.

10. For the reasons discussed, we modify the impugned order setting aside the portion pertaining to refund claimed on various input services as shown in the table above and allow the refund of an amount of

Rs. 98,578/- as claimed by the appellant along with interest paid on the said amount. The rejection of refund on the service tax paid on various services used for trading activities of Rs 39,71,696/- along with interest is upheld. The appellant is found eligible for consequential relief as stated. The appeal is partly allowed and disposed of accordingly.

(Order pronounced in open court on 21.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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