CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 51659 of 2018

(Arising out of Order-in-Original No. ALW-EX-OIO-COM-72/16-17 dated 12.01.2017 passed by the Commissioner of Central Excise & Service Tax, Alwar (Raj.)

M/s Tirupati Commodities **Appellant**
Jaipur

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
Jaipur

<u>Appearance</u>

Shri Om. P. Agarwal, Chartered Accountant - for the Appellant

Dr. Radhe Tallo, Authorized Representative for the Respondent

<u>CORAM:</u>

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Order: 06.10.2022

Final Order No. 50963/2022

<u>P.V. Subba Rao</u>

This appeal is filed by the appellant assailing order in original dated 12.01.2017 passed by the Commissioner, Central Excise & Service Tax, Alwar whereby he confirmed demand of Rs. 5,34,29,176/ under Rule 14 of Cenvat Credit Rules, 2004[1] read with Section 73(2) of the Finance Act, 1994 along with interest under Rule 14 of CCR read with Section 75 of the Finance Act, 1994. He further imposed an equal amount as penalty under Rule 15(3) of CCR, read with Section 78 of the Finance Act, 1994.

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1 CCR

2. We have heard learned Chartered Accountant for the appellant and learned authorized representative for the Revenue.

3. The undisputed facts of the case are that the appellant was providing "forward contract services" taxable under Section 65(45a) of the Finance Act 1994 and was paying service tax as applicable and was also availing the benefit of Cenvat credit on the "input services" used in providing these services. In addition to these services, the appellant was also engaged in trading activity which, is as per the law, is an exempted service. The appellant availed Cenvat credit on common input services viz., security services and telephone services which were used both in providing the taxable service and the exempted service.

4. During audit of the records of the appellant, the audit team pointed out that since the appellant had availed Cenvat credit on common input services and had not maintained separate records for taxable and exempted services as required under Rule 6(2) of CCR, it was required to pay an amount equal to 5% / 6% of the value of the exempted services under Rule 6(3) of the CCR. On being pointed out, the appellant had reversed the entire amount of Cenvat credit taken on the common input services along with interest during the audit itself. This fact is not disputed and has also been recorded in paragraph 15.1 of the impugned order. Nevertheless, a show cause notice dated 21.04.2015 was issued to the appellant demanding under Rule 6(3) of CCR an amount equal to 5% / 6% of the value of exempted services rendered by the appellant. This show cause notice was adjudicated by the

impugned order confirming the demand along with interest and imposing the penalty.

5. Learned Chartered Accountant for the appellant submits that the only allegation in the show cause notice was that the appellant had availed the Cenvat credit on common input services. The appellant had reversed the same during audit itself along with interest and there was no case for Revenue to have issued a show cause notice at all. He further submits that if Cenvat credit has been availed and has then been reversed, it is as good as not availing the Cenvat credit at all as has been held by the Supreme Court in **Chandrapur Magnet Wires (P) Ltd. Vs. Collector of Central Excise, Nagpur**[2]. He also placed reliance on several other case laws in which the same view was taken.

6. Learned authorized representative for the Revenue supports the impugned order.

7. We find that Rule 6 of CCR places several obligations upon the assessee to avail Cenvat credit. If these obligations are not fulfilled, the assessee cannot avail Cenvat credit and if an assessee avails Cenvat credit without fulfilling the obligations under Rule 6 such irregularly availed Cenvat credit can be recovered under Rule 14 of CCR. These obligations under Rule 6 can be fulfilled opting for Rule 6(1) or Rule 6(2) or Rule 6(3) of the CCR. Rule 6(1) states that no Cenvat credit shall be availed on the inputs/input services used in manufacture of exempted goods or used in rendering exempted services. Rule 6(2) states that separate accounts shall be maintained by a person availing Cenvat credit and providing

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both taxable and exempted services. Rule 6(3) states that if Rule 6(1) or 6(2) are not fulfilled then an amount of 5% / 6% of the value of the exempted services shall be paid. These options are available to the assessee and it is open to the assessee to chose any of the options. It is not open to the Revenue to chose one of the options and force it upon the assessee. If the obligation is not fulfilled under any of the options, the irregularly availed Cenvat credit can be recovered under Rule 14 of CCR.

8. In this case, the appellant availed Cenvat credit and on being pointed out by the audit, reversed the entire amount of Cenvat credit so availed along with interest. The appellant could have availed Cenvat credit proportionately to the extent such common input services were used in rendering taxable services. However, to buy peace, the appellant reversed the entire amount of Cenvat credit. Therefore, no Cenvat credit on common input services remains availed by the appellant and its Therefore, the obligation under Rule 6(1) has been fully met. Further, Rule 6(2) requires separate accounts to be maintained but it does not specify in what form the accounts have to be maintained. If the credit is taken and thereafter reversed it is also a way of maintaining accounts and we do not find any restriction in the CCR against maintaining the accounts in this manner. Therefore, the appellant is fully compliant in terms of Rule 6(2) as well. As the appellant has fulfilled its obligation in terms of Rule 6(1) and also in terms of Rule 6(2), no case existed at all for issuance of the show cause notice in the first place nor it being confirmed by the impugned order. The show cause notice was issued and the impugned order was passed

completely contrary to the law laid down by the Supreme Court in **Chandrapur Magnet Wires (P) Ltd.**

9. In view of the above, the impugned order cannot be sustained and needs to be set aside and we do so. The appeal is allowed and the impugned order is set aside with consequential relief, if any, to the appellant.

(Pronounced in open Court)

(P.V. Subba Rao)
Member (Technical)

(Dr. Rachna Gupta)
Member (Judicial)

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