CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,COURT NO. 1

SERVICE TAX APPEAL NO. 51194 OF 2016

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-36 to 38-15-16 dated 15.01.2016 passed by the Commissioner, Central Excise, Jaipur]

COMMISSIONER, CENTRAL EXCISE-
JAIPUR I **Appellant**

Vs.

M/s. SHREE AURO IRON LTD.
E-359, Road No. 14, VKI Area, **Respondent**
Jaipur (Raj)

Appearance:
Present for the Respondent: Shri Ravi Kapoor, Authorised Representative
Present for the Appellant : Ms Kainaat, Advocate

CORAM:
HON'BLE Mr.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE Mr. P ANJANI KUMAR, MEMBER(TECHNICAL)

Date of Hearing /Decision: **15/05/2023**

FINAL ORDER No. 50688 /2023

PER P ANJANI KUMAR

This appeal assails the order dated 15.01.2016 passed by Commissioner, Jaipur.

2. Briefly stated the facts of the case are that the appellants are registered under Central Excise for trading of CR Coils, HR Coils, MS Angles/Channels/Flat etc. and they are also registered for payment of service tax under the category of Goods Transport Agency service. They have also obtained a separate service tax registration in the name of Shri Manglam (a unit of M/s Shree

Auro Iron Ltd., the appellant) for providing Business Auxiliary service. For the job-work of cutting of CR/HR Coils.

3. During the course of audit, the department observed that the appellant have availed service tax credit on common input services like office expenses, car expenses, telephone service, courier service, cargo handling service etc. which are used in providing taxable services and exempted services; the appellant had not maintained separate record for the Cenvat credit availed as per Rule 6(2) of the Cenvat Credit Rules, 2004 and have not paid the amount as provided under Rule 6(3) ibid. Three show cause notices were issued to the appellants seeking recovery of an amount of Rs.1,11,60,433/-.

4. Learned Adjudicating Authority vide the impugned order has dropped the demand. Committee of Chief Commissioners having found the order is legally not tenable have reviewed the order and have directed the Commissioner of Central Excise to file an appeal. Hence, this appeal.

5. Shri Ravi Kapoor, learned authorised representative appearing for the department, reiterates the grounds of appeal and submits that Committee of Chief Commissioners observed that as the appellants have not complied with substantive requirement of Rules 6(3A) of Cenvat Credit Rules, 2004, they cannot avail the benefit of Rules 6 ibid.

6. Learned authorised representative relies upon the judgment of Hon'ble Supreme Court in the case of **State of Jharkhand vs. Ambay Cements**[1] wherein it was held-

> "Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. "

7. Learned authorised representative further submits that as the appellants have not complied with the conditions laid down under Rule 6(3A) of the Cenvat Credit Rules, subsequent reversal of credit will not make them eligible for the benefit of Rule 6(3)(ii) of Cenvat Credit Rules, 2004. He relies upon the following cases-

1. **Lally Automobiles Pvt. Ltd. vs. Commissioner (Adjudication), C. Ex**[2]
2. **Lally Automobiles Private Limited vs. Commissioner**[3]
3. **Commr. of C. EX. & CUS., Vadodara-II Vs Unimed Technologies Ltd.**[4]**,**
4. **Commissioner of C. EX., THANE-I Vs Nicholas Piramal (India) Ltd.**[5]
5. **Tata Steel Ltd. Versus Commissioner OF C. EX. & Service Tax-JSR**[6]

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1 [2004 (178) ELT 55 (SC)]
2 [2018 (17) G.S.T.L. 422 (Del.)]
3 [2019 (24) G.S.T.L. J115 (S.C.)]
4 [2018 (17) G.S.T.L. 181 (Guj.)]
5 [2009 (244) E.L.T. 321 (Bom.)]
6 [2014 (33) S.T.R. 440 G.S.T.L. 181 (Guj.)]

6. **Commissioner OF C. EX., Thane-I Versus Nicholas Piramal (India) Ltd.**[7]

7. **Tata Steel Ltd. Versus Commissioner of C. EX. & SERVICE TAX-JSR**[8]

8. **STATE OF JHARKHAND Versus AMBAY CEMENTS**[1]

8. Ms. J Kainaat, learned counsel appearing for the respondent submits that immediately on pointing out by the Revenue, they have reversed the credit taken along with interest and the adjudicating authority, on being satisfied, dropped whole of the demand. She submits that in view of the various decisions of the Tribunal and High Court, Cenvat credit taken, if reversed at any stage, whether before or after clearance of exempted goods, is to be considered to be the credit not taken. She relies upon the following cases:-

1. **Hello Minerals Water (P) Ltd. vs UOI**[9]**.**
2. **Jost's Engineering Co. Ltd vs. CCE**[10]
3. **CCE vs. Hindustan Zinc Ltd**[11]
4. **Bhel-Ge Gas Turbine Services vs. CCE**[12] **[**
5. **DR. Writer's Food Products vs. CCE**[13]
6. **CCE vs Ashima Dyecot Ltd.**[14]
7. **CCE vs Ashima Dyecot Ltd.**[15]
8. **Chandrapur Magnet Wires (P) Ltd. vs CCE**[16]

9. Heard both the sides and perused the record of the case.

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7 [2009 (244) E.L.T. 321 (Bom.)]
8 [2014 (33) S.T.R. 440 (Tri. - Kolkata)]
9 [2004 (174) ELT 422 (All)]
10 [2015 (320) ELT 157 (Tri. Mum)
11 [2021 (375) ELT 446 (Tri - Del.)]
12 [2021 (44) GSTL 399 (T)]
13 [2009 (247) ELT 391 (T)]
14 [2008 (232) ELT 580 (Guj)].
15 [2009 (240) ELT A41 (SC)].
16 [1996 (81) ELT 3 (SC)]

10. The brief issue for consideration in the instant case is as to whether the adjudicating authority was correct in holding that once the credit availed on common inputs /service is reversed, the appellants are not required to reverse the amount as contemplated under Rule6(3A)(ii) of the said Rules. Adjudicating authority has recorded a finding that there are plethora of decisions of various appellate forums wherein it was consistently held that when the entire Cenvat credit stands reversed, it is as good as not availing the credit. We find that learned Commissioner has relied upon the decision of High Court in the **Commissioner of Central Excise, Bangalore III vs. Himalaya Drug Company**[17] ; **Commissioner of Central Excise vs Ashima Dyecot Ltd.**[14] upheld by the **Supreme Court**[15] ; **Commissioner of Central Excise vs. Foram Glazed Tiles**[18] **; Hello Minerals Water (P) Ltd. vs UOI**[9] and some decisions of the Tribunal.

11. Having gone through the records of the case and the case law submitted by rival contestants, we are of the considered opinion that the issue is no longer res integra. In the instant case, the appellants have reversed the entire credit availed by them on common inputs and to this extent the case law of **Lally Automobiles Pvt. Ltd. vs. Commissioner (Adjudication), Central Excise** relied upon by the authorised representative is not applicable to the facts of the case as the issue decided in

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17 [2011 (271) ELT 350 (Kar)]
18 [2011 (267) ELT 461 (Guj)

Lally Automobiles Pvt. Ltd. was about reversal of proportional credit and requirement of arriving at the amount to be reversed and on reasonable and logical principles.

12. In view of the ratio of various decisions cited above and the facts of the case, we find that no case has been made out by Revenue for setting aside the impugned order.

13. The impugned order does not suffer from any infirmity and so appeal filed by the Revenue is dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P ANJANI KUMAR)
MEMBER(TECHNICAL)

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