IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 06/04/2017.
DATE OF DECISION : 13/04/2017.

Service Tax Appeal No. 50540 of 2014

[Arising out of the Order-in-Original No. JAI-EXCUS-001-COM-059-13-14 dated 03/09/2013 passed by The Commissioner, Central Excise, Jaipur.]

M/s The Tree House Hotel Club & Spa Appellant

Versus

CCE, Jaipur – I Respondent

Appearance

Shri Narendra Singhvi, Advocate – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52854/2017 Dated : 13/04/2017

Per. B. Ravichandran :-

The appeal is against order dated 30/09/2013 of Commissioner of Central Excise, Jaipur. The appellants are engaged in running hotel and provide various taxable services. They are providing short term accommodation to their guests and also rent out their premises for various functions, conference, wedding etc. They are also having restaurant in their premises and are also having a club on membership basis. The dispute in the present appeal, covering the period May 2011 to March 2012, is with reference to the abatement claim by the appellant under Notification 1/2006-ST dated 01/03/2006. One of the conditions stipulated in the said notification is that to avail the abatement, Cenvat credit on input services should not have been availed. As they availed credit and also availed the abatement under the said notification, proceedings were initiated to deny the abatement under Notification 1/2006-ST and to confirm differential service tax liability consequent on such denial. The Original Authority held that the appellants violated the conditions of the said notification by availing the Cenvat credit on input services and accordingly held, that an amount of Rs. 54,28,759/- is liable to be paid towards service tax by the appellant. He imposed penalty of equivalent amount under Section 78 and further penalty of Rs. 5,000/- under Section 77 of the Finance Act, 1994.

2. Contesting the findings recorded in the impugned order, the learned Counsel for the appellant submitted that they have reversed the Cenvat credit alongwith the interest and hence their claim for the abatement under the said notification cannot be denied. When the credit stands reversed alongwith interest it is equivalent to non-availment of credit itself. It is further submitted that the time of reversal of such credit is immaterial, as long as the same is done with applicable interest. The learned Counsel relied on the following cases in support of his defence :-

(a) **CCE, Jaipur – I vs. Sanjay Engineering Industries** reported in **2016 (43) S.T.R. 354 (Raj.)** ;

(b) **Beekay Engineering Corporation vs. Commissioner** reported in **2015 – TIOL – 2458 – CESTT – DEL.** ;

(c) **Sonalac Paints & Coatings Limited vs. Commissioner** reported in **2015 – TIOL – 77 – SC – CX.**

(d) **CCE & CUS. vs. Precot Meridian Limited** reported in **2015 (325) E.L.T. 234 (S.C.)** ;

(e) **Hello Mineral Water (P) Limited vs. Union of India** reported in **2004 (174) E.L.T. 422 (All.)** ;

(f) **Uniworth Limited vs. Commissioner** reported in **2016 – TIOL – 3081 – CESTAT – DEL.** ; and

(g) **Old World Hospitality Limited vs. Commissioner** reported in **2017 – VIL – 97 – CESTAT – DEL – ST**.

3. The learned AR reiterated the findings in the impugned order. He submitted that subsequent reversal of Cenvat credit, already availed by the appellant, cannot form basis for availing the abatement under Notification 1/2006-ST. He relied on the decision of the Tribunal in **Hind Lamps Ltd. vs. CCE, Kanpur** reported in **2010 (250) E.L.T. 237 (Tr. – Del.)**.

4. We have heard both the sides and perused the appeal records. Admittedly, the appellants availed Cenvat credit on input services and the same was barred when the claim for abatement under Notification 1/2006-ST is made by the appellant. In other

words, Cenvat credit on input services and abatement under Notification 1/2006-ST cannot be availed at the same time. However, admittedly, in the present case the appellants have reversed the full Cenvat credit availed alongwith applicable interest later. All the credits alongwith applicable interest, have been reversed before adjudication by the Commissioner. The impugned order held that reversal of credits after the same have been earlier put to use, will not form the basis for availing abatement under Notification 1/2006-ST. The conditions for eligibility of abatement under notification are to be strictly interpreted and accordingly he disallowed the appellant's claim for duty concession under the said notification. We note that similar set of facts were considered by the Tribunal and High Courts and Supreme Court. Dealing with the provisions of the very same notification, the Hon'ble Rajasthan High Court in the case of **Sanjay Engineering Industries** (supra) held as below :-

> "8. We have heard learned counsel for the parties and perused the record. In our view, the order of the Tribunal is just and proper and is not required to be interfered with. The Tribunal has taken into consideration the finding that admittedly during the course of adjudication the assessee submitted that they have reversed the total credit availed of by them during March, 2008 to the extent of Rs. 2,06,541/- along with interest of Rs. 17,093/- and once they reversed the total credit and deposited the same, they became entitled to the benefit of Notification. The Tribunal further found that subsequent reversal of credit even after utilization of the same and clearance of the final product

will relate to a situation as if no credit was ever availed, and Tribunal on finding of fact found that the respondent is entitled to full waiver.

9. The Allahabad High Court in the case of *Hello Minerals Water (P) Ltd.* (supra), had taken into consideration the question as to whether manufacturer can be treated as not having taken credit on the inputs used in the manufacture of any product even though it was originally taken but subsequently reversed, and held that the Revenue was not justified in holding a different view that reversal of the credit having been made by the petitioner after removal of the final products the petitioner was not entitled to the benefit. The Allahabad High Court further found that where the specific issue was whether the reversal of credit subsequent to removal of goods was fatal to the extension of benefits of the Notification considered the matter at length and had found that the majority decision of the five Member Bench of the Tribunal upheld the argument of the assessee therein and held that reversal of credit subsequent to the clearance of the exempted product is in line with the ratio of the Supreme Court judgment laid down in *Chandrapur Magnet Wires (P) Ltd.* v. *Collector, Central Excise,* 1996 (81) E.L.T. 3 (S.C.). Accordingly, in our view the said judgment squarely covers the issue raised in the instant appeal.

10. The Gujarat High Court in the case of *Ashima Dyecot Ltd.* (supra), also took into consideration the judgment rendered by the Apex Court in the case of *Chandrapur Magnet Wires (P) Ltd.* (supra), and observed as under :-

> "6. The findings rendered by the Hon'ble Supreme Court in the case of *Chandrapur Magnet Wires (P) Ltd.* (supra), are clearly applicable to the present

matters. In that case also, the case of the Department was that reversal of credit entries is not permitted by the rules. The assessee is not entitled to remove the copper wires without payment of duty since credit of the duty paid on the inputs used in the manufacture of copper wire had already been taken in accordance with Rule 57A. Once appropriate entries have been made in the register, there is no rule under which the process could be reversed. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. But, the Court's attention was drawn to the departmental circular according to which in a case where the manufacturer produces dutiable final products and also final goods which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. Based on this, the Court held that the manufacturer may take credit of duty paid on all the inputs used in the manu-facture of final products on which duty will have to be paid and in view of this clarification by the Department, the Court saw no reason that why the assessee should not make a debit entry in the credit account before removal of the exempted final product and hence, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. The Court, therefore, took the view that the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken the credit of the duty paid in the inputs used in manufacture of these goods. The ratio laid

> down in this decision is squarely applicable to the facts of the present case and maintenance of separate books of account at the initial stage cannot be considered to be a condition precedent for the purpose of claiming the benefit of exemption to the respondent-assessee."

> Thus, the judgment of Gujarat High Court is also squarely applicable on the facts of the instant case.

> 11. The judgments relied upon by the learned counsel for the appellant are on different proposition and distinguishable on facts".

5. Regarding the reliance placed by the Revenue on the decision of the Tribunal in **Hind Lamps Ltd.** (supra), we note that the Tribunal was examining the provisions of erstwhile Rule 57CC of Central Excise Rules, 1944. The said decision was examined and distinguished by the Tribunal in **Punj Lloyd Limited vs. CCE & ST, Rohtak** reported in **2015 (40) S.T.R. 1028 (Tri. – Del.)**. The Tribunal observed as below :-

> "5. As regards the eligibility for the benefit of Notification No. 1/2006-S.T. after reversal of the Cenvat credit taken on input services along with interest, it needs to be appreciated that in the Notification No. 15/2004-S.T. there was no bar against taking Cenvat credit of input services. When the said notification was superseded by Notification No. 1/2006-S.T. an additional condition of non-availment of Cenvat credit on input services was also introduced. It is thus possible that initially this may have escaped the attention of the appellant. No prudent person would take the risk of being saddled with a demand of almost Rs. 14

crores merely for input service credit of just above Rs. 32 lakhs. As regards the possible argument that there is no equity in taxation and exemption notifications have to be construed strictly, suffice to say that in the case of *Hello Minerals* (supra) the Allahabad High Court has clearly held as under :-

> "18. In view of the above decision we are of the opinion that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage."

We find that the judgment of Allahabad High Court had taken into account the Supreme Court judgment in the case of *Chandrapur Magnet Wires Pvt. Ltd.* (supra). Indeed in the above case, the Hon'ble Supreme Court concluded that *"we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product"*. This observation in no way necessarily implies that the Supreme Court would have necessarily found it unacceptable if a debit entry in the credit account was made after removal of the exempted goods, particularly when such debit entry reversed the Cenvat credit along with interest before the primary adjudication. Seen in this light the distinguishing effort by CESTAT in the case of *Hind Lamps* (supra) fails to be convincing. The Bombay High Court judgment in the case of *Nicholas Piramal* (supra) cited by the ld. Departmental Representative was with regard to the interpretation of Rule 57C and Rule 57CC of Central Excise Rules, 1944 and Rule 6 of Cenvat Credit Rules, 2004 and hence has no direct applicability to the issue at hand. The CESTAT judgment in the case of *Sunil Hi-Tech Engineers* (supra) cited by ld. Departmental Representative was in relation to Service Tax liability of main contractor vis-a-vis sub-contractor and hence is not germane to the issue at hand. As regards the other judgment *Dilip Chhabria Designs* [2015-TIOL-851-HC-Mum-CX = 2015 (323) E.L.T. 565 (Bom.)], cited by Revenue to distinguish the judgment in the case of *Hello Minerals* (supra), we find that the facts in that case were very different inasmuch as in that case the assessee did not reverse the credit at the time of removal of goods or after removal. Without dwelling further on the subject, we may only add that as on today the judgment of Allahabad High Court in the case of *Hello Minerals* (supra) continues to be good law with regard to the subject at hand and has been repeatedly followed by CESTAT, e.g., in the case of *Hindustan Construction Co. Ltd.* v. *CST, Mumbai* (Order No. S/924/14/CSTB/C-I, dated 3-9-2014), *B.G. Shirke Construction Tech.* v. *CCE, Pune* [2009 (13) S.T.R. 686 (Tri. - Mum.)] and *Khyati Tours & Travels* v. *CCE, Ahmedabad* [2012 (27) S.T.R. 366 (Tri. - Ahmd.)]. As such we hold that the component of impugned demand arising as a result of denial of the benefit of Notification No. 1/2006-S.T. is not sustainable".

6. We may also refer to decision of Hon'ble Madras High Court in **CCE, Puducherry vs. CESTAT, Chennai** reported in **2015 (323) E.L.T. 323 (Mad.)** and Hon'ble Andhra Pradesh High Court in **CCE, Hyderabad – II vs. SPM Industries India Pvt. Ltd.** reported in **2016 (336) E.L.T. 477 (A.P.)**, where similar ratio was adopted.

7. In view of the settled legal position, as discussed above, we find that the denial of abatement under Notification 1/2006-ST is

not justifiable. Accordingly, we set aside the impugned order and allow the appeal.

(Order pronounced in open court on 13/04/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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