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

Date of Hearing/Order: 17.4.2017

Appeal No. E/2681/2011-SM

(Arising out of Order-in-Appeal No. 209(CB)CE/JPR-II/2011 dated 22.9.2011 passed by the Commissioner of Central Excise, & Service Tax, Jaipur-II)

M/s Secure Meters Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance

Shri Dhruv Tiwari, Advocate - for the appellant

Shri G.R. Singh, D.R., Shri K. Poddar, DR - for the respondent
Ms. Kanu Verma Kumar, DR

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 52960/2017

Per Ashok K. Arya :

M/s Secure Meters Ltd. is in appeal against the Order-in-Appeal No. 209/2011 dated 22.9.2011 passed by Commissioner (Appeals), Jaipur-I, whereunder interest liability on the Cenvat credit amount which was reversed on 13.4.2009 by the appellant has been sustained.

2. The brief facts are that:

(i) The appellant, M/s Secure Meters Ltd., who have got four additional units, other than the unit at Udaipur (Rajasthan), located in H.P. Four units of H.P. are exempted, and they do not pay any duty of Central Excise, they being under area based exemption. During audit, the Revenue pointed out that Cenvat credit taken for banking and financial services, which are utilised also for these four units along with the Udaipur unit is non-Cenvatable and was reversed on 13.4.2009 accordingly.

(ii) Later, the department issued Show Cause Notice demanding interest on the said reversed Cenvat amount without mentioning the quantum of said Cenvat amount which had been taken on banking and financial services. Interest liability was confirmed by the Order-in-Original as well as by the impugned order in appeal. The appellant is now in appeal before the Tribunal against confirmation of interest liability.

3. With above background both sides have been heard, represented by ld. Counsels, Shri Dhruv Tiwari for the appellant and Shri G.R. Singh, Shri K. Poddar and Ms. Kanu Verma Kumar for the Revenue.

4. The appellant inter alia contends that Rule 6(5) of Cenvat Credit Rules specifically says that in case of banking and financial service, which is mentioned as taxable service under sub-clause (zm) of clause 105 of Section 65 of Finance Act, Cenvat credit is admissible if such service is not exclusively used in or in relation to the

manufacture of exempted goods or providing exempted services. The appellant mentions that the said banking and financial services are used for all units including for Udaipur unit, which is a duty paying unit. Thus said input service i.e. banking and financial service is covered under Rule 6(5) of Cenvat Credit Rules, 2005 and appellant is entitled to claim Cenvat credit for the said banking and financial service; further, no interest can be fastened on this account on them. In support, the appellant cites CESTAT decision in their own case i.e. *Secure Meters Ltd. Vs. CCE & ST, Jaipur* Final Order No. 52089-52090/2017-DB made in Appeal Nos. E/1366, 1524/2011.

5. The ld. Counsels for Revenue vehemently argues that once the assessee has reversed the subject Cenvat credit of Rs.30,56,648/- taken on banking and financial services during audit without any protest they are bound to pay interest for the period when the said amount was lying in their Cenvat account. The Revenue further states that originally the show cause notice has dealt with only with the interest part, and cites in support Hon'ble Supreme Court decision in the case of ***Pratibha Processors Vs. Union of India -*** 1996 (88) ELT 12 (SC) and Tribunal's decision in ***Pearl Polymers Ltd. Vs. CCE, Raigarh -*** 2004 (174) ELT 41 (Tri.-Del.).

6. After perusal of the case records and submissions of both the sides, it is clear that basic liability of Cenvat amount taken against

the banking and financial services by the assessee appellant is not directly been under consideration during these proceedings. However, liability of interest which is under consideration is on account of main amount of Cenvat credit, which was reversed by the assessee appellant on 13.4.2009 during the audit conducted by the department.

6.1 After having gone through the provisions of Rule 6(5) of Cenvat Credit Rules, 2004 (as existed during the relevant period) and considering the Tribunal's order in case of assessee's own case (supra) there cannot be any doubt that interest liability which is subject matter of present proceedings, on the Cenvat credit amount of Rs.30,56,648/- cannot be sustained against the appellant assessee. In other words, when in the light of provisions of Rule 6(5) of Cenvat Credit Rules, 2004 and the ratio of CESTAT decision in the case of *Secure Meters* (supra), the original amount of Cenvat credit which was reversed by the assessee appellant during the audit appears to be admissible to the assessee, the present interest demand against them is not sustainable.

6.2 In case of certain other services CESTAT in the case of *Secure Meters Ltd*. (supra) has observed as under :

> "8. In view of the above fact, in terms of Rule 6(5) of Cenvat Credit Rules, the full Cenvat credit will be available to the assessee, if such services were used in a manufacturing unit making both, the exempted as well as dutiable goods. In the present case, the full Cenvat credit has been availed by the ISD who is required to distribute the same to various units as per Rule 7 of Cenvat Credit Rules. The Rule 7 (as it stood at the relevant time) only enforces the condition that credit of service tax attributed to services used in units exclusively engaged in the manufacture of exempted goods or providing exempted services shall not be distributed. The appellant's four manufacturing units are covered by area based exemption and no such duty is payable on the goods manufactured there. However, there is nothing on record to suggest that any of the services have been used only in the units manufacturing exempted goods. In fact, the nature of services tells us that these are used at the level of corporate of the manufacturing units of the assessee. Under the circumstances, restricting the distribution of Cenvat credit in terms of Rule 7 is not justifiable. The restrictions are there only in distribution of credit in respect of services which are exclusively used in relation to manufacturing of exempted goods."
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> It may be mentioned that Rule 7 of Cenvat Credit Rules, was amended vide Notification No. 5/2014-CE(NT) dated 24.2.2014 whereby the expression was substituted with "used by one or more units" in the place of "used in a unit". Further, such an amendment will have no bearing in the present proceedings which cover the period prior to Jan. 2010. The submissions of the appellant is supported by the decision of Tribunal in the case of Elder Pharmaceuticals Ltd. (supra)"

The ratio of this decision is applicable to present facts.

6.3 The decisions cited by the ld. Counsel for the Revenue are distinguishable and the same are not applicable to the facts of the present proceedings.

7. In the light of above discussions, the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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