CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 23.05.2017

Appeal No. ST/56936/2013
[Arising out of the Order-in-Appeal No. 15/BPL/2013 dated 15/01/2013, passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Bhopal (M.P.)

CCE Bhopal … Appellant

Vs.

C I Finlease Ltd … Respondent

Appearance:

Present Mrs.Kannu Verma Kumar, DR for the appellant
Present Shri A.K. Tiwari, Advocate for the respondent

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

FINAL ORDER No. 53518/2017

Per Ashok K. Arya :

1. Revenue is in Appeal against Order in Appeal no. 15/2013 dated 15/01/2013 whereunder the demand and recovery of Cenvat credit amounting to Rs. 17,13,309/- along with penalties has been dropped.

2. Brief facts are that :

i. Respondent, M/*s C I Finlease Ltd* is a holder of service tax registration for providing services of authorized service station and business auxiliary service.

ii. Respondent availed Cenvat credit of service tax on various input services mainly telephone, advertisements, renting, insurance, courier, security etc under Cenvat Credit Rules, 2004.

iii. The respondent was also utilizing Cenvat credit of various services at their showroom for sale of motor cars and servicing of motor vehicles. Thus, input services were jointly used for trading activity as well as taxable output services.

iv. The Revenue was of the view that input services used in trading activity (which is exempted from payment of service tax) cannot be treated as input service as defined in Rule 2 (l) readwith Rule 6(1) of Cenvat credit Rules, 2004 for purpose of availing Cenvat credit; therefore, credit of service tax paid on said input services utilized for trading activity that is sale of motor vehicles cannot be allowed.

v. The appellant failed to maintain separate accounts of Cenvat credit utilized for exempted services (trading activity) and taxable services (authorized service station service).Therefore, department issued a show cause notice for disallowing and recovery of Cenvat credit amounting to Rs. 7,13,309/- pertaining to trading activities of the appellant.

vi. This demand was confirmed by Order in Original dated 28/06/2012 passed by Additional Commissioner.

vii. The respondent went in appeal before Commissioner (Appeal), who dropped the demand of Cenvat credit mainly on the reasoning that during the relevant period of 2005-06 to 2009-10, Rule 6 (5) of Cenvat credit Rules, 2004 was in force and this Rule (6) 5 of Cenvat Credit Rules, 2004 was omitted only with effect from 01/04/2011 by Notification no. 03/2011 CE (NT) dated 01/03/2011.

viii. Therefore, the revenue is now in appeal against the impugned order in appeal.

3. Both sides represented by the Ld. DR, Mrs. Kanu Verma Kumar for the Revenue and Ld. CS, Shri Arvind Kumar Tiwari for the respondent have been heard.

4. After having carefully considered the facts of the case and the submissions of both the sides, it appears that during the relevant period Cenvat credit for the input services utilized for taxable and exempted services was admissible as per provisions of rule 6(5) of Cenvat Credit Rules, 2004, which was deleted by Notification no. 3/2011-CN (NT) dated 01/03/2011 with effect from 01/04/2011. When the period involved is from 2005-06 to 2009-10, there cannot be liability of reversal of Cenvat credit against the respondent. In this regard, the Tribunal for similar facts in its final order number A/50548/2015-SM/BR dated 25/2/2015 in (Appeal No. ST/55590/2014-ST (SM) in the case of *CI Auto motors Pvt. Ltd. Vs CCE and ST Bhopa*l has observed as under:

> 4. Heard both sides. Having regard to the facts that an Explanation was added to Section 65(105) (zo) *ibid* with effect from 01.04.2011 to clarify that

trading is an exempted service and in view of the differing views of CESTAT as evident from the judgments cited above, it can be safely concluded that there was a clear scope of genuine confusion in the matter, Ld. Departmental Representative contends that if there was indeed a *bona fide* belief on the part of the appellants, they would have mentioned the trading activities in ST-3 returns under exempted category but that trading is an exempted service was clarified by an amendment to the Act only with effect from 01.04.2011. Further, several of the services in respect of which the credit is sought to be denied were those covered under sub-Rule (5) of Rule 6 of CENVAT Credit Rules. In these circumstances, the appellants have been able to make out a case that the extended period is not invokable. I find that the period involved in this case is 01.04.2005 to 31.03.2010 and the Show Cause Notice was issued on 16.05.2011. Thus, it is evident that no part of the impugned demand is within the normal period of one year with reference to the date of issue of Show Cause Notice and therefore I hold the demand to be time barred. Accordingly, the impugned order is set aside and the appeal allowed.

5. In the light of above discussion, observation and Tribunal's decision (supara), there is no merit in the appeal filed by the Revenue. In the result, the impugned order is sustained and appeal rejected as without merits.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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