CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/52159/2014 ST. [SM]

[Arising out of Order-in-Appeal No.CHD-EXCUS-000-APP-12-14-15 dated 21.01.2014 passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh]

Service Tax Appeal No.ST/52146/2014 ST. [SM]

[Arising out of Order-in-Appeal No.CHD-EXCUS-000-APP-17-13-14 dated 22.01.2014 passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Goel Motors Pvt. Ltd. …Appellant

Vs.

C.C.E., Chandigarh … Respondent

Present for the Appellant : Shri Jitendra Singh, Advocate
Present for the Respondent: Shri Devender Singh, JCDR

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 24.07.2015

Final ORDER NO. 54414-54415/2015

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 21.01.2014 and 22.01.2014 passed by the Commissioner (Appeals), Central Excise and Customs, Chandigarh-I.

2. Brief facts of the case are that the appellant is a is engaged in providing the taxable services namely, authorized service station service and business auxiliary service and for that purpose, is registered under the service tax statute. The appellant is also a dealer of Mahindra vehicles. The appellant avails cenvat credit of service tax paid on various services used for both providing of output services as well as for selling of vehicles. Taking of cenvat credit of service tax paid on both category of services were objected to by the Department and the service tax and penalty amount were confirmed by the authorities below.

3. Shri Jitendra Singh, the ld. Consultant appearing for the appellant submits that the appellant availed the cenvat credit under the bonafide belief that selling of vehicles is not an exempted service and as such, the embargo created in Rule 6 of the Cenvat Credit Rules, 2004 will not have any application for taking the cenvat credit on the taxable services. He further submits that consequent upon the decision of the Tribunal in

the case of **Orion Appliances vs. Commissioner of Service Tax, Ahmedabad reported in 2010 19 STR 205 (Tri.-Ahmd.)**, the appellant calculated the service tax attributable to the services used/utilised for both providing the services as well as for trading of vehicles and reversed the cenvat credit along with interest attributable to the trading of vehicles. During the course of hearing, the ld. Consultant has submitted the statement, showing the Cenvat credit reversal particulars and payment of interest by the appellant. The ld. Consultant further submits that the penalty imposed by the authorities below are not in conformity with the service tax statute inasmuch as non-reversal of cenvat credit at that particular moment of time was not possible and the issue regarding not taking of cenvat credit on the trading activity was contentious one, which was settled by the above decision of the Tribunal subsequently.

4. Per contra, Shri Devender Singh, ld. JCDR submits that selling of vehicle is not considered as service at all and as such, taking of cenvat credit on the input service has no legal sanctity. He submits that since the credit has been taken wrongly, the appellant is liable to pay penalty and the authorities below are justified in imposing penalty on the appellant.

5. I have heard the ld. Counsel for both sides and perused the records.

6. Rule 3 *ibid* is the enabling provision, which entitles the service provider to take cenvat credit of service tax paid on any input service received by the provider of output services. Since the appellant is providing the taxable service as well as selling vehicles, had entertained the view that selling vehicles since is not an exempted service, the appellant is entitled for cenvat credit in terms of rule 3 of the said rules.

7. I find that with regard to taking of cenvat credit on the trading activity by considering the same as service has been dealt with by this Tribunal in the case of **Orion Appliances Ltd. (supra**). The relevant portion of the decision is extracted below:-

> ***8.*** *Then the question arises as to whether the appellant would be eligible for the full amount of service tax credit taken by them on input services can be used for payment of service on output service provided the input services have been used for providing the output services. No doubt there is no one to one correlation required. This is the reason why provisions have been made in Cenvat Credit Rules and Service Tax Credit Rules to cover such situations where an assessee is providing both exempted and taxable services. In cases where an assessee is undertaking activities which cannot be called a service or which cannot be called manufacture, that activity goes out of the purview of both Central Excise Act as well as Finance Act, 1994. Therefore, we have a situation where an assessee would not be eligible to take input Service tax credit on an output which is neither a service nor excisable goods and at the same*

time there is no provision to cover situations where an assessee is providing a taxable service and is undertaking another activity which is neither a service nor manufacture. In such a situation the only correct legal position appears to be that it is for the appellant to choose and segregate the quantum of input service attributable to trading activity and exclude the same from the records maintained for availment of credit. Naturally this cannot be done in advance since it may not be possible to forecast what would be the quantum of trading activity and other activity which is liable to service tax. The only obvious solution which would be legally correct appears to be to ensure that once in a quarter or once in a six months, the quantum of input service tax credit attributed to trading activities according to standard accounting principles is deducted and the balance only availed for the purpose of payment of service tax of output service. This proposition is not against the law in view of the fact that there are several decisions of various High Courts and also of the Tribunal wherein a view has been taken that subsequent reversal of credit amounts to non-availment of credit.

8. In view of the said decision, since the appellant had reversed the cenvat credit attributable to the trading activity i.e. selling of vehicles alongwith interest, the legislative intent behind framing of cenvat credit rules, in my opinion, have been duly complied with. However, since the statement calculating the service tax amount and the interest thereon was submitted for the first time before this Tribunal, I am of the view that the same is required to be verified by the original authority. I find that the ld. Commissioner (Appeals) in the impugned order has

confirmed the penalty under Rule 15 of the Cenvat Credit Rules, 2004. In the said order, though equal amount of penalty imposed by the adjudicating authority has been confirmed, but no findings have been recorded therein showing the involvement of the appellant in any activity in defrauding the Government Revenue. Since the issue involved is interpretation of the statutory provisions, I am of the considered view that the ends of justice will be met, if the penalty is reduced to Rs.2,000/-.

9. In view of the above, the impugned order is set aside and the matter is remanded to the original authority for verification of the cenvat credit reversal particulars and payment of interest by the appellant. If the stand taken by the appellant that the amount in question had been deposited is correct, the original authority shall close the proceedings towards proposed Cenvat demand along with interest. The equal amount of penalty imposed by the authorities below is reduced to Rs.2,000/- each in both the cases. The appeals are disposed of in above terms.

(Dictated and pronounced in the open Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita