IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/50869/2017-[SM]
[Arising out of Order-In-Appeal No. 482/(AK)CE/JPR/2016 dated 20.12.2016 passed by Commr. (Jaipur)]

C.C.E. – Udaipur ...Appellant(s)

Vs.

Suryodaya & Associates ...Respondent(s)

Appearance:
Mrs. K. Verma Kumar (DR) for the Appellant
None for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing. 14.07.2017
Date of Decision. 18.07.2017

Final Order No. 55280 /2017

Per S. K. Mohanty:

Revenue is in appeal against the impugned order dated 20.12.2016 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur, wherein by setting aside the adjudication order, the appeal of the respondent was allowed, holding that the upon deposit of the amount of cenvat credit on input service along with interest, the proceedings cannot be initiated under Rule 6 of the Cenvat Credit Rules, 2004 for payment of amount in respect of the exempted service provided by the assessee.

2. Revenue has assailed the impugned order on the ground that the provisions of Rule 6 ibid are attracted in the circumstances of the present case inasmuch as the respondent did not maintain

separate accounts of the input services used in providing both taxable services as well as non-taxable/ exempted services. The Revenue has relied on the judgment of Hon'ble Supreme Court in the case of State of Jharkhand vs Ambay Cements-2004 (178) ELT 55 (S.C.) to state that Rule 6 ibid can be strictly interpreted and mere reversal of cenvat credit and payment of interest will not absolve the respondent for complying with such statutory requirement.

3. Heard the Ld. DR for Revenue. None appeared for the Respondent, despite notice.

4. On perusal of the impugned order, I find that the jurisdictional central excise authorities vide verification report dated 15.11.2016 have confirmed that the respondent had deposited the whole amount of disputed cenvat credit of input service along with interest, which was used in providing the non-taxable/ exempted output service. Since before issuance of show cause notice, the entire irregularly availed cenvat credit was reversed/ paid by the respondent, it has to be construed that no cenvat credit at all was taken by the appellant. In this context, the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires Pvt. Ltd. Vs Collector of Central Excise, Nagpur reported in 1996(81)ELT-3(S.C.) have held that on reversal of modvat credit, the assessee cannot be said to have taken credit of duty on the inputs utilized in the manufacture of exempted product, and accordingly the exemption provided under the Notification cannot be deniable.

5. The Judgment of Hon'ble Supreme Court in the case of Ambay Cements (supra) relied on by the Revenue are distinguishable from

the facts of the present case inasmuch as the issue decided therein relates to interpretation of the exemption provisions contained in the taxing statute; whereas, the issue in hand relates to payment of amount on provision of exempted service, when the cenvat credit was availed by the assessee. Since, the credit in question was reversed/ paid before initiation of the show cause proceedings, the situation has to be interpreted to mean as if no cenvat credit was taken. Thus, in such eventuality, the rigor of Rule 6 ibid will not be applicable. I am of the view that the interpretation placed by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires Pvt. Ltd. (surpa) is more appropriate for deciding the issue in hand.

6. Therefore, I do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals). Accordingly, the appeal filed by Revenue is dismissed.

(Pronounced in the open court on 18.07.2017)

(S. K. Mohanty)
Member(Judicial)

Neha