CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 50165 of 2014

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-063-13-14 dated 21.10.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur)

DATE OF HEARING : 04.12.2017
DATE OF DECISION : 04.12.2017

M/s Compucom Software Ltd. …. Appellants
(Rep by Ms. Rinky Arora, Adv.)

VERSUS

CST, Jaipur …. Respondent
(Rep. by Sh. Amresh Jain, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 58282/2017

PER B. RAVICHANDRAN :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. JAI-EXCUS-001-COM-063-13-14 dated 21.10.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur. The period in dispute is April, 2007 to March, 2008.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in

providing taxable and exempted services. They were availing Cenvat Credit of Service Tax paid on input services under Cenvat Credit Rules, 2004. The dispute in the present appeal relates to the application of Rule 6 of the Rules to the effect that the assessee-Appellants should maintain separate accounts for usage of credit availed input services for taxable output services and exempted output services. They did not do so. Accordingly, proceedings were initiated against them to demand and recover an amount equal to 8% of the value of the exempted services in terms of Rule 6(3)(ii) of the Cenvat Credit Rules, 2004. The original authority held that as the assessee-Appellants violated the provisions of Rule 6, they have to pay an amount of 8% on the exempted services and also imposed penalties.

3. Heard Ms. Rinky Arora, learned counsel for the assessee-Appellants and Shri Amresh Jain, learned DR for the Department.

4. The learned counsel for the assessee-Appellants submits that the facts of the case are not in dispute. They did avail credit of input services which are common to exempted as well as taxable output services. However, when the compliance of Rule 6 was pointed out to them, they have reversed the credit availed of input services which are attributable to exempted output services. She submitted that the said fact has been noted in the show cause notice as well as in the impugned order. When the assessee-

Appellants reversed the proportionate credit along with interest, as stipulated under Rule 6, the same will amount to non-availing of Cenvat credit to that extent. She also relied upon the ratio of the Hon'ble Supreme Court in the case of **Chandrapur Magnet Wires (P) Ltd. vs CCE, Nagpur,** 1996 (81) ELT 3 (SC), and also the decision of Hon'ble Allahabad High Court in the case of **Hello Minerals Water (P) Ltd. vs Union of India,** 2004 (174) ELT 422 (Alld). She further submits that the ratio of these cases has been consistently followed in various decisions of this Tribunal. In addition to these submissions, the assessee-Appellants did not take any other ground for grievance.

5. The learned DR for the Department contested the submissions of the assessee-Appellants. He submitted that the ratio of **Chandrapur Magnet Wires (P) Ltd.** (supra) has only application to interpret the conditions of Rule 6 of Cenvat Credit Rules, 2004. He submitted that they should have opted for maintenance of separate accounts and accordingly reversed proportionate credit at the relevant time itself.

6. After hearing both sides and on perusal of the material available on record, we note that based on the claim of the assessee-Appellants, they have reversed credit with interest that is attributable to input services used in exempted output services. We also note that the issue has come up before the Tribunal on a number of occasions and the Tribunal is consistently following the

ratio laid down in the orders of the Hon'ble Supreme Court and High Courts, cited by the assessee-Appellants, as above. We further note that reversal of credit amount attributable to exempted services, in any case, is to be confirmed by verification of documents. The claim made by the assessee-Appellants requires verification by the original authority. On satisfactory verification of such reversal of credit along with interest in line with the ratio laid down by this Tribunal in various cases (recent one being Final Order No. 57119/2017 dated 09.10.2017 in **Aaram Plastic Pvt. Ltd. vs CCE, Jodhpur**) and the decision of the Hon'ble Supreme Court and High Courts, cited above, the demand of 8% of value of exempted services was not justified. Hence, the appeal is allowed in the above terms.

7. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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