

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

**Excise Appeal No.E/52822/2018-ST [SM]**

[Arising out of Order-in-Appeal No.17(CRM)/ST/JDR/2017-18 dated 02.01.2018 passed by the Commissioner of Central Goods & Service Tax (Audit) Commissionerate, Jodhpur]

**M/s. Pioneer Grani Marmo Pvt. Ltd. ...Appellant**

**Vs.**

**CCE & ST, Udaipur ... Respondent**

Present for the Appellant : Ms.Rinki Arora, Advocates  
Present for the Respondent: Mr.K. Poddar, D.R.

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing: 16/11/2018  
Pronounced on :14/12/2018**

**Final ORDER NO. 53401 /2018**

**PER: RACHNA GUPTA**

Present is an appeal directed against the order of Commissioner (Appeals) bearing No.17 dated 02.01.2018.

2. The facts in brief relevant for the purpose are that the appellant is engaged in manufacture of marble slabs and they were availing benefit of SSI exemption under Notification No.08/2003-CE. It is after the appellant cross the threshold

limit of value of clearance i.e. Rs.1.50 Crores that they intimated the Department vide letter dated 20<sup>th</sup> January, 2015 regarding cenvat credit taken under Rule 3 (2) of Cenvat Rules, 2004 on the inputs (imported marble slabs) lying in stock at the time of said crossing. The cenvat credit of Rs.4,38,723/- of SAD was taken on marble blocks imported vide Bill of Entry No. 5499271 dated 15.05.2014 and 5577715 dated 22.05.2014. Department vide show cause notice No.4983 dated 02.09.2015 demanded the recovery of the aforesaid cenvat credit alongwith the interest in accordance of Section 11AB of Central Excise Act and imposed of penalty in accordance with Rule 15A of Cenvat Credit Rules, 2004. The said proposal was confirmed by the order of Assistant Commissioner bearing No. 12 dated 22.01.2016. Appeal thereof was filed before Commissioner (Appeals) who rejected the same upholding the findings of Order-in-Original. Being aggrieved, the appellant is before this Tribunal.

3. I have heard Ms. Rinki Arora, Id. Advocate for the appellant, who has submitted that Rule 3 (2) of Cenvat Credit Rules, 2004 permits the assessee to take cenvat credit of duty paid on inputs lying in stock on the date on which the goods manufactured seized to be exempted goods. Since the appellant was earlier availing an SSI exemption but crossed the threshold limit of Rs.1.5 Crores in January, 2015, the appellant was very much entitled to obtain the cenvat credit lying in their stock on the said threshold date. It is submitted

that adjudicating authority disallowed the cenvat credit of Rs.4,38,723/ on the ground that Rule 4 (i) of CCR, 2004 do not allow availment of cenvat credit beyond a period of six months from the date of issue of prescribed document. It is mentioned that the authority has wrongly invoked Rule 4 (1) as Rule 3 is applicable in the given scenario. She has relied upon following decisions of this Tribunal:-

1. M/s. Micro Marbles Pvt. Ltd. vs. CCE & ST, Udaipur in Appeal No. E/51032/2018, E/51129-51135/2018 & E/51302/2018.
2. M/s. Rathi Tiles Pvt. Ltd. vs. CCE & CGST, Jodhpur in Appeal No. E/52061/2018- SM in Appeal No. E/52061/2018
4. Department on the other hand has justified the order impressing upon that the manufacturer or the provider of output service was not entitled to avail cenvat credit after six months of the date of issue of any of the documents specified in sub-rule (1) of Rule 9 of CCR 2004 as is mentioned in Rule 4 (1) thereof. Since both the impugned bill of entries were beyond the period of 6 months of appellant crossing the threshold limit of SSI exemption, the cenvat credit has wrongly been disallowed and has been asked to be recovered. Appeal is prayed to be dismissed.

5. After hearing both the parties, I am of the opinion as follows:-

6. It is an admitted fact of the case that the appellant was availing the benefit of SSI exemption till January, 2015. After crossing the threshold limit of that exemption, the appellant availed the cenvat credit of the inputs lying in their stock in accordance of Rule 3 (2) of Cenvat Credit Rules, 2004. It is apparent on record that the said credit has been disallowed as been asked to be recovered in view of Rule 4 (1) of CCR 2004. Thus, the basic defence of appellant is that both the said sub-rules cannot be applied simultaneously and they are entitled for availment of credit in view of Rule 3(2) of Cenvat Credit Rules. The moot controversy, therefore is to be adjudicated is as to whether both the said provisions are to be applied simultaneously or while applying Rule 3 (2) CCR, 2004 Rule 4 (1) thereof has no applicability. For this purpose both the Rules need to be reproduced. Rule 3 (1) of CCR, 2004 reads as follows:-

*"Notwithstanding anything contained in Sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT Credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable."*

**Rule 4 (1) of CCR 2004 reads as follows:-**

**"Rule 4. Conditions for allowing CENVAT credit.-**

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the

manufacturer or in the premises of the provider of output service:

**Provided** that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.”

Provided further, the manufacturer or the provider of output service shall not take cenvat credit after six months of the date of issue of the documents specified in sub-rule (1) of the Rules.

7. From the wording of above 2 rules there is nothing, to my opinion, to suggest that both these Rules cannot be applied simultaneously. I opine that Rule 3 (2) prescribes the eligibility to avail cenvat credit as soon as the unit crosses threshold limit and rule 4 (1) prescribes particular condition for the availment of that credit. If a condition under rule 4 specifically disallows cenvat credit on a particular goods or service, the cenvat credit cannot be allowed under rule 3 of the Cenvat Credit Rules, 2004.

8. Though the appellant has taken a plea that Rule 3 (2) of CCR, 2004 has been provided with the sole intention of law that the goods which have become dutiable after the

exemption seized to exist, then naturally to avoid cascading effect of duty suffered on inputs involved on such goods, such benefit of cenvat credit is to be given to the manufacturer and any provision of law putting a limitation thereto shall not be applicable simultaneously to this provision. But, I am not convinced with the argument put-forth. The opening line of rule 3 (2) reads, " notwithstanding anything contained in sub-rule (1)" had it been the intention of the legislature as impressed upon by the appellant, the said opening line should be, "notwithstanding anything contained in this act". This particular observation is sufficient to hold an opinion that both the provisions i.e. Rule 3 (2) and 4 (1) are simultaneously applicable for the later rule prescribing a particular condition for availment of the credit made permissible under the former rule 3 (2).

9. The decisions relied upon by the appellant seems not acceptable, in view of the settled principles of interpretation. The law of interpretation rests on following phrases:

(1) "Ex praecedentibus et consequentibus optima fit interpretation"

Meaning :

The best interpretation is made from the context.

(2) "Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare Vel respondere Meaning:

It is unjust to decide or respond as to any particular part of a law without examining the whole of law.

(3) "Interpretare et concordare leges legibus, est optimus interpretendi modus" Meaning:

To interpret and in such a way as to harmonize law with laws, is the best mode of interpretation.

10. The Hon'ble Apex Court in the case of **Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra – 1989**

**(44) ELT 613 (S.C.)** has held:

*"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency"*

*"... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an*

*imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed..." It was also held that the well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes*

*necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

11. Based upon these principles, I hereby observe that present case is different from the case law relied upon by the appellant and hold that the appellate authority has rightly denied the availment of cenvat credit to the appellant for such of its stock. The invoices were beyond a period of six months of appellant crossing the threshold limit of SSI exemption. The order accordingly is upheld. Appeal is hereby dismissed.

[Pronounced in the Open Court on 14.12.2018]

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita