CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No.53314 of 2018 (SM)

[Arising out of Order-in-Appeal No.674(CRM)CE/JDR/2018 dated 28.06.2018 in Appeal No.53314 of 2018 (SM) and Order-in-Appeal No.679 (CRM)CE/JDR/2018 dated 29.06.2018 in Appeal No.53343 of 2018 (SM), passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur (Rajasthan)]

M/s. Micro Marble Pvt. Ltd. **Appellant**
E-5 A, RIICO Industrial Area,
Chittorgarh, Rajasthan.

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
142-B, Hiran Magri, Sector-11,
Near Shahi Bagh,
Udaipur (Rajasthan).

WITH

Excise Appeal No.53343 of 2018 (SM)

[Arising out of Order-in-Appeal No.679(CRM)CE/JDR/2018 dated 29.06.2018 in Appeal No.53343 of 2018 (SM) passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur (Rajasthan)]

M/s. Micro Marblex India Pvt.Ltd. **Appellant**
E-5 A, RIICO Industrial Area,
Chittorgarh, Rajasthan.

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
142-B, Hiran Magri, Sector-11,
Near Shahi Bagh,
Udaipur (Rajasthan).

APPEARANCE:

Ms. Rinki Arora, Advocate for the appellant.
Shri P.R.Gupta, Authorised Representative for the respondent.

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NOS.50861-50862/2019

DATE OF HEARING:03.05.2019
DATE OF DECISION:03.05.2019

ANIL CHOUDHARY:

The issue in this appeal is whether the cenvat credit taken on capital goods during the period when the goods manufactured by the appellant are taxable and whether the same lapses subsequently when the appellant had availed SSI exemption. The admitted facts are that the appellant is engaged in the activity of manufacture of Marble Slabs/sheets from marble blocks. The appellant acquired capital goods for their business during the period March, 2003 to June 2004 and took cenvat credit. Thereafter, the Hon'ble Supreme Court's ruling came in the case of **Aman Marbles Pvt. Ltd.**, wherein it was held that the activity of the cutting of Marble Slabs /sheets into tiles does not amount to manufacture. Subsequently, by Finance Bill 2006, Chapter Note VI was introduced in Chapter 25, which is as follows:-

> **"6. In relation to products of heading 2515 and 2516 (Marble Slabs and Tiles), the process of cutting or sawing or sizing or polishing or any other process, for converting of stone blocks into slabs or tiles, shall amount to manufacture".**

Accordingly, the products of the appellant became taxable. The appellant, being eligible, availed SSI exemption w.e.f. 30.06.2006. All throughout, the appellant in their returns filed before the Department were carrying un-utilised balance of cenvat credit of the capital goods. Subsequently, show cause notice dated 28.2.2011 was issued invoking extended period of limitation, as it appeared to Revenue that the cenvat credit on capital goods has been lapsed under the provisions of Section 11(2) of the Cenvat Credit Rules when the availed SSI exemption. Accordingly, the appellant was not entitled to carry forward and utilise such cenvat credit after they started paying duty again from March/April, 2007.

2. Heard the parties.

3. The relevant provisions for the sake of reference are produced hereinbelow: **Para 2 of Notification No.8/2003**

> **"(iv) the manufacturer also does not utilise the credit of duty on capital goods under rule 3 or rule 11 of the said rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred lakhs, as calculated in the manner specified in the said Table;**

> > **(b) <u>Rule 11(2) Cenvat Credit Rules, 2002:</u>- A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearance in a financial year, and who has been taking cenvat credit on inputs or input services, before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, <u>if any, lying in his credit, the balance if any, still remaining shall lapse</u> and shall not be allowed to be utilized for payment of duty on any**

excisable goods, whether cleared for home consumption or for export."

(c) Rule 6(4) of Cenvat Credit Rules, 2004: No cenvat credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year. (emphasis supplied).

4. Further, para-2 of the Notification No.8/2003 (SSI exemption) provides as under:-

> **"(iii) The manufacturer shall not avail the credit of duty on inputs under Rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (hereinafter referred to as the said rules), paid on inputs ……………of first clearance of which, as calculated, in the manner, specified in the said Table does not exceed rupees one hundred lakhs;".**

5. Thus, on a cogent or harmonious reading of the aforementioned provisions, it is evident that what lapses on the date the asssessee avails SSI exemption, is only cenvat credit related to input or input services. This view was fortified by the provisions of Rule 6(4) of CCR, which provides that an assessee is entitled to take cenvat credit on capital goods even during the period, they were availing SSI exemption. However, under Clause (IV) in

para 2 of the SSI exemption notification, the utilisation of such cenvat credit taken on capital goods during the period of enjoying the SSI exemption is suspended.

6. Thus, I hold that the cenvat credit of capital goods does not lapse and was rightly availed by the appellants and subsequently, utilised when they stopped availing the SSI exemption. Accordingly, I hold that the appeal is allowed both on merits as well as on limitation. The issue being wholly of interpretation, the impugned order is set aside. Both the appeals are allowed. The appellants are entitled to consequential benefit.

(Dictated and pronounced in open court)

(Anil Choudhary)
Member (Judicial)

Ckp.