CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench - Court No. – I

Service Tax Appeal No. 567 of 2009

(Arising out of **Order-in-original** No. 22/2009-ST dated 25.03.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II)

BHEL-GE Gas Turbine Services Private Ltd. .. **APPELLANT**
203-204, Ashoka Bhoopal Chambers, 146/a,
Sardar Patel Road, Secunderabad,
Andhra Pradesh – 500 003.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Central Excise & Service Tax Secunderabad-GST
Kendriya Shulk Bhavan, L.G. Stadium Road,
Basheerbagh, Hyderabad, Telanga - 500004.

Appearance
Shri K. Sivarajan & Shri Rhul Banani, Advocates for the Appellant
Shri B. Guna Ranjan, Supdt. Authorized Representative for the Respondent

Coram: **Hon'ble Mr. S.K. MOHANTY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. _30928/2020

Date of Hearing : 18.02.2020
Date of Decision : 18.02.2020

[ORDER PER: MR. S.K. MOHANTY]

This appeal is directed against the impugned order dated 25.03.2009 passed by the Ld. Commissioner of Customs, Central Excise & Service Tax, Hyderabad.

2. Brief facts of the case are that the appellant is engaged in providing the taxable services categorized under Consulting Engineer, Works Contract, Maintenance or Repair and Business Auxiliary Services, defined under Section 65 of the Finance Act, 1994. For providing such taxable services, the appellant got itself registered with the jurisdictional service tax authorities. During the course of verification of records for the period March, 2007 to

March, 2008, the department observed that apart from providing the said taxable services, the appellant is also engaged in the business of trading of gas turbines, which is not a taxable service. It was further observed that for providing the taxable services as well as for trading activities, the appellant had availed common input services viz. telephone, car hire charges, couriers and air travel tickets etc., and did not maintain separate accounts as envisaged under Rule 6 of the Cenvat Credit Rules, 2004. Accordingly, the department initiated show cause proceedings against the appellant, which culminated into the impugned order dated 25.03.2009, wherein the Ld. Adjudicating authority has confirmed cenvat demand of Rs.4,83,65,919/- along with interest and also imposed penalties under Section 76 and 78 of the Finance Act, 1994.

3. The Ld. Advocate appearing for the appellant submitted that the activity of trading does not qualify as a service and therefore, there was no requirement of reversal of any common input service credit. He further submitted that the amendment made in the definition of exempted service as per Rule 2(e) in the Cenvat Credit Rules, 2004 is effective only from 01.04.2011 and cannot be applied retrospectively for effecting recovery of the adjudged demands for the period, prior to such effective date. The Ld. Advocate further submitted that the appellant had maintained the accounting records, showing availment particulars of Cenvat credit in respect of the taxable services as well as the trading activities. Further, he also submitted that the input service credit attributable to the trading activities was reversed by the appellant, based on the records maintained under Rule 6 (2) *ibid.* Thus, he submitted that the impugned order cannot be sustained.

4. On the other hand, the Ld. AR appearing for the Revenue reiterated the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. The facts involved in this case are not in dispute that the appellant had availed common input services, which were used for providing the taxable output services as well as the trading activities and that the appellant had reversed the quantum of Cenvat credit attributable to such trading activities.

We have noticed from the impugned order at paragraph 9.7 that the appellant had deposited the service tax amount in respect of the Cenvat credit taken for providing the trading activities. Since, the Cenvat credit amount towards trading of goods was paid by the appellant, it has to be construed that no Cenvat credit was at all taken by the appellant in respect of the common input services. In this context, the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. Vs. Collector of Central Excise, Nagpur – 2002-TIOL-41-SC-CX have ruled that on reversal of credit, the assessee cannot be said to have taken credit of duty on the inputs utilized in the manufacture of exempted final products. However, the appellant is liable to compensate the government exchequer by paying the interest amount between the period of taking Cenvat credit on the common input services and actual payment of such cenvat amount into the Central Government account.

7. In view of above, the impugned order is set aside and the appeal is allowed, to the extent it has confirmed the service tax demand and imposition of penalties on the appellant. The impugned order sustains, insofar as it has confirmed the interest demand on the appellant. However, the department should quantify the actual amount of interest payable by the appellant in terms of paragraph 6 above.

8. In the result, the appeal is partly allowed.

(Operative part of the Order pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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