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

Division Bench – Court No. – I

Excise Appeal No. 30081 of 2017

(Arising out of Order-in-Original No. HYD-EXCUS-003-COM-053-16-17 dt.27.09.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Voith Turbo Pvt Ltd
PO Industrial Estate, Nacharam,
Hyderabad, Telangana – 500 076
......Appellant

VERSUS

Commissioner of Central Tax
Secunderabad - GST
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004
......Respondent

Appearance
Shri K. Lakshman, CA for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30243/2025

Date of Hearing: 04.04.2025
Date of Decision: 28.07.2025

[Order per: A.K. JYOTISHI]

M/s Voith Turbo Pvt Ltd., (hereinafter referred to as the appellant) are in appeal against the OIO dt.27.09.2016 (impugned order), whereby, demand of Rs.1,39,18,042/- under Cenvat Credit Rules (CCR), 2004 was confirmed and a penalty of Rs.73,81,070/- under section 11AC of the Central Excise Act, 1944 was imposed.

2. The issue, in brief, is that the appellants are engaged in manufacture of Hydraulic/ Fluid Couplings and are also involved in trading activity of imported goods. Further, based on the audit of the company, objection was raised with regard to availment of Cenvat credit attributable to trading turnover on the grounds that trading of imported goods is an exempted service. The appellants, on their own, to avoid litigation and before issuance of SCN, have discharged an amount of Rs.1,59,910/- for the period July, 2013 to August, 2014 being proportionate Cenvat credit attributable to

trading activity along with interest of Rs.8,112/- in terms of Rule 6(3)(ii) read with Rule 6(3A) of CCR and subsequently also an amount of Rs.1,20,581/- was reversed for the period September, 2014 to March, 2015.

3. In this appeal, the demand was raised under Rule 6(3)(i) by demanding an amount equivalent to 5%/6% of exempted turnover for the period November, 2010 to March, 2015. This was based on the understanding that trading is an exempted service under CCR, 2004.

4. Learned Advocate's main contention is that prior to 01.04.2011, when the definition of 'exempted service' was amended bringing trading within its purview, the said notification cannot be given retrospective effect to bring the trading activity within the purview of exempted service for the period October, 2010 to March, 2011. He has further relied on the fact that department's demand under Rule 6(3)(i) is not correct as it is prerogative of the appellant to exercise option under Rule 6(3)(ii) read with Rule 6(3A) of CCR, according to which proportionate credit attributable to exempted services can be reversed. Merely because this option has been exercised at a later stage, this substantive right of the appellant cannot be denied and department cannot impose demand by choosing any option. They have placed reliance on the following judgments:

a) Jurisdictional HC decision in the case of Tiara Advertising Vs UOI [2019 (30) GSTL 474 (HC)]
b) Aster Pvt Ltd Vs Commissioner [2016 (43) STR 411 (Tri-Hyd)]
c) Linkwell Telesystems Pvt Ltd Vs CCT, Secunderabad [2023 (383) ELT 84 (Tri-Hyd)]
d) Mercedes Benz India (P) Ltd Vs CCE, Pune-I [2015 (40) STR 381]
e) Tata Technologies Ltd Vs Commissioner [2016 (42) STR 290 (Tribunal)]

5. Learned Advocate is also contesting the appeal on the grounds of invocation of extended period, primarily on the ground that issue involved is interpretation of provisions and that there is no substantive ground adduced in the SCN alleging deliberate or malafide intention to evade any duty. It is an admitted fact that Rule 6 itself was subjected to several changes at various points of time during the said period. He is also contesting that once the entire amount of proportionate credit has been reversed and they were having sufficient balance of credit lying with them, it would tantamount to

credit being not utilized and reversed before utilizing the same and therefore, no interest is required to be paid. He has relied on the following judgments:

a) Chandrapur Magnet Wires (P) Ltd Vs Collector [1996 (81) ELT 3 (SC)]
b) Linkwell Telesystems Pvt Ltd Vs CCT, Secunderabad [2023 (383) ELT 84 (Tri-Hyd)]
c) CCE Vs Strategic Engineering (P) Ltd [2014-TIOL-466-HC-MAD-CX]
d) Garden Silk Mills Ltd Vs CCE [2015-TIOL-2304-CESTAT-AHM]

6. On the other hand, learned AR has reiterated the findings in the impugned order and has also relied on the judgment in the case of Lally Automobiles Pvt Ltd Vs Commissioner [2018 (17) GSTL 422 (Del)] and CCE, Thane-I Vs Nicholas Piramal (India) Ltd [2009 (8) TMI 224 – Bombay HC] in support that trading activity was covered under the purview of exempted services even prior to 01.04.2011.

7. Heard both sides and perused the records.

8. The issue to be decided in this appeal is

a) Whether trading was an exempted service during the relevant period or otherwise for the purpose of CCR, 2004; and
b) If it was an exempted service, whether the compliance of reversal of proportionate credit by the appellant is correct or otherwise.

9. We note that the entire issue is based on the fact that the appellants were found to have been engaged in manufacturing of goods as well as in trading of goods, which was considered to be an exempted service. Therefore, in terms of Rule 6 of CCR, when common inputs are used for manufacturing of both dutiable and exempted goods/services, certain compliances are required to be followed by the appellant, who are otherwise not able to maintain separate accounts for use of such inputs or input service. Insofar as trading being an exempted service or otherwise, we find that the definition of exempted service was amended vide Notification No.03/2011-CE (NT) dt.01.03.2011 w.e.f. 01.04.2011, whereby, by way of an explanation, it was clarified that exempted service includes trading. Moreover, subsequent thereto, w.e.f. 01.07.2012 till 31.03.2016, the trading activity was brought under the negative list of services. However,

there was always a dispute whether exempted services also include the activities which are not at all a service in the first instance. Subsequent to 01.04.2016, various amendments were brought in by way of explanation (3) under Rule 6(1) of CCR vide Notification No.13/2016 dt.01.03.2016, which categorically provided that for the purpose of such rule, exempted services as defined in clause (e) of Rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994. In fact, the same was further amended vide Notification No.24/2016 dt.13.04.2016, whereby, explanation (3) was as under:-

> *'**Explanation 3** – For the purpose of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994 provided that such activity has used inputs or input services.'*

10. Therefore, we find that there is force in the argument of the appellant that till 13.04.2016, there was no clarity as regards treating the trading activity as an exempted service for the purpose of Rule 6 of CCR or otherwise. While for the period 01.04.2011 to 30.06.2012, there is clear cut provision that exempted service includes trading, the same cannot be given retrospective effect. In this regard, reliance has been placed by the department on the judgment of Lally Automobiles Pvt Ltd Vs Commissioner (supra), where, under the similar situation, the Hon'ble High Court of Delhi also considered the issue whether the amendment vide Notification No.03/2011 was having retrospective effect or otherwise. The Hon'ble Court has decided the issue by considering that whenever someone undertakes certain activity which cannot be called service or which is not a manufacture, the activity goes out of the purview of both the Central Excise Act as well as the Finance Act and in such case, assessee would be ineligible for claiming input service tax credit on an output which is neither a service nor an excisable good and only correct legal position would be for the assessee to segregate the quantum of input service attributable to trading activity and exclude the same from the records maintained for availing credit. We find that even though the order did not specifically stated that this has got retrospective effect, it observed that under the circumstances the appellants could not have taken the credit itself and the proportionate credit attributable to the said activity is required to be reversed.

11. Insofar as their ground for invocation of extended period is concerned, we find that clearly there were several conflictions, views and judgments

whether trading activity shall be treated as exempted service or otherwise and it was the subject matter of various amendments and interpretations and therefore, in the absence of any specific and positive ground for invoking extended period, the extended period cannot be invoked in the present appeal. The reliance has been placed by the appellant on the following judgments:

a) Bharat Heavy Electricals Ltd Vs CCT,CE & ST, Medchal [2020 (43) GSTL 395 (Tri-Hyd)], wherein, it was held as follows:

   "On proper scrutiny of the case records, we are convinced that the extended period of limitation cannot be invoked against the appellant for confirmation of the adjudged demands inasmuch as the charges of suppression, fraud, wilful misstatement etc., cannot be invoked for bona fide interpretation of the statutory provisions placed by the appellant. We find that in an identical situation, this Tribunal in the case of AVL India Pvt. Ltd. (supra) has held that the extended period of limitation cannot be invoked to the issues concerning interpretation of the provisions contained in the explanation to Rule 2(e) ibid and accordingly, has held that the demand, if any, should only be confined to the normal period. It has also been held that penalty cannot be imposed on the assessee."

b) Mahindra & Mahindra Ltd Vs CCE, Mumbai [2018 (364) ELT 1006 (Tri-Mumbai)], wherein, it was held as under:

   "It is a settled law that when there is an interpretation of law and had general practice amongst the mass, it cannot be said that the assessee has mala fide intention to avail undue benefit. It is also on record that the Appellant have been declaring the availment of Cenvat credit on common input service in their ST-3 return. The Appellant have recorded in their books of account the manufacturing activity as well as trading activity. In such situation, it cannot be alleged on the Appellant that they have suppressed the facts to evade duty. In absence of any mala fide intention and suppression of fact, the extended period of demand cannot be invoked, Hence, the demand is liable to be set aside on the ground of limitation itself."

c) Rangsons Electronic Solutions (P) Ltd Vs CCE [2014 (301) ELT 696 (Tri-Bang)], wherein, it was held as under:

   "In view of the available facts and circumstances of the case and several decisions relied upon and cited by the learned counsel (we have not taken note of all of them since we do not feel the need), appellant cannot be found fault with for coming up with an interpretation and availing the benefit which was not available to them. Under these circumstances, we have to take a view that the order of the Commissioner limiting the demand to the normal period and not imposing the penalty was an order which rendered justice to the appellant/assessee without being unfair to the Revenue. Therefore we do not find any merit in the appeal filed by the Revenue and reject the same."

12. We find the reliance placed on these judgments is relevant. Further, considering the fact that the appellants have already reversed proportionate credit attributable to the activity of trading on their own, therefore, we do

not find any infirmity merely because it has been exercised at a later date or that there was no strict compliance of the procedural requirements under Rule 6(3A) of CCR. Thus, we find merit in the argument that they are entitled for reversal of proportionate credit attributable to trading turnover under Rule 6(3)(ii) read with Rule 6(3A) of the CCR.

13. However, it is not clear from the record as to whether the department has accepted this calculation or otherwise. In view of the same, this needs to be cross-checked by the department whether the appellants have reversed the proportionate credit attributable to the trading activity.

14. In view of the discussions in foregoing paras, we remand the matter back to the Original Adjudicating Authority to compute the demand in terms of Rule 6(3)(ii) read with Rule 6(3A) of CCR, 2004 and thereafter, appropriate the same, if already discharged along with interest. It is also clarified that the demand of interest on reversal of credit is regulated by the provisions under CCR and if it was only taken and not utilized, in view of the factual matrix, then the interest may not be chargeable in terms of extant provisions applicable during the relevant period. This aspect may also have to be re-examined for the purpose of computing interest, if any. Further, the extended period for demand will also not be applicable in the facts of the case. Therefore, demand, if any, can be confirmed only within the normal period. Penalty is also not imposable in view of the fact that no substantive ground has been brought on record for invocation of penalty under section 11AC and the fact that extended period itself is not invokable in the present factual matrix.

15. Appeal is allowed by way of remand.

(Pronounced in the Open Court on 28.07.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda