IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

MA (EH)-75559/17
& Ex.Appeal No.287/12

(Arising out of Order-in-Original No.CCE/BBSR II/No.22-23/Commissioner/2012 dated 20.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR II.

M/s Vedanta Aluminium Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Customs & S. Tax, BBSR II

Respondent (s)

Appearance:

Shri K. K. Acharya, Advocate for the Appellant (s)
Shri K. Chowdhury, Supdt. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 01.05.2018
Date of Decision : 01.05.2018

ORDER NO- **FO/A/75920/2018 & MO/75588/2018**

Per Dr. Satish Chandra.

For the reasons mentioned in the application, the early hearing is granted. With the consent of both sides, the appeal is taken up for disposal.

2. The present appeal is filed against the Order-in-Original No.CCE/BBSR II/No.22-23/Commissioner/2012 dated 20.03.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR II.

3. Briefly stated the facts of the case are that during the period from October, 2009 to March, 2011, the appellant had availed cenvat credit on various inputs, capital goods and services. The demand has

been confirmed against them for utilizing the cenvat credit from the common pool account towards discharging their service tax liability. But the same was not allowed by the Department. Being aggrieved, the appellant has filed the present appeal.

4. With these background, Shri K. K. Acharya, ld.Counsel for the appellant, submits that they utilized the cenvat credit for discharging their excise duty liability as well as service tax. It is his submission that whatever credit availed by them on account of input, input services and capital goods, are maintained in a common Cenvat Register and utilized towards discharging of their liabilities. He relies on the following Tribunal's decisions :

(i) Instrumentation Ltd. Vs. CCEx., Jaipur : 2011 (23) STR 79 (Tri-Del.) ;

(ii) Jyoti Structures Ltd. Vs. CCEx., Nasik : 2012 (285) ELT 356 (Tri.-Mumbai).

5. On the other hand, Shri K.Chowdhury, ld.A.R. for the Revenue, has justified the impugned order.

6. After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Hon'ble High Court of Bombay in the case CCEx., Pune Vs. S. S. Engineers : 2016 (42) STR 3 (Bom.), where it was observed as under :

> ***"3.*** *Ordinarily an interpretation of a rule and in the light of a substantive legislation on Central Excise and Service Tax, would have raised a substantial question of law. However, we find that the Tribunal has arrived at a conclusion that the credit is admissible during the course of manufacture of the final product of duty paid on inputs as well as service tax on the input service availed of. While*

availing of that credit, the cross utilization is not ruled out, leave alone barred or prohibited. That is how Cenvat Credit Rules have been analyzed. Rule 3(1) of the Rules provides that the manufacturer or producer of final products or a provider of output service shall be allowed to take credit on various duties and that is the substantive provision in the rules. That is titled "Cenvat credit". That takes within its fold the duty of excise, other duties and service tax leviable under Section 66 of the Finance Act, 1994 and thereafter with effect from 18 April, 2006, service tax leviable under Section 66A of the said Act. If these are various duties of which credit can be availed of, then, further sub-rules as analyzed by the Tribunal in paragraph 5 do not suffer from any perversity. The only difficulty that may have been presented throughout was of scrutiny and verification of the accounts. The accounts are maintained in relation to payments of both levies. Even that does not present any difficulty once the Revenue has issued a circular to guide the officers. That circular, a copy of which is handed over to us and contained in the compilation at page 36, is dated 30 March, 2010. It is on the subject of cross-utilization of credit on inputs and input service. The Tribunal, therefore, has rightly come to the conclusion that there are certain restrictions on the utilization of particular type of duty and for that purpose it has relied on Rule 7 of Cenvat Credit Rules. A reference to that also does not vitiate the impugned order inasmuch as Rule 7 states that input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the conditions stipulated therein. In such circumstances, the cross utilization of credit on goods and services being not covered by any restrictive provision, leave alone any prohibition or embargo, the Tribunal's

> *order does not call for any interference. The interpretation placed on the Rule is a probable and a possible view. That cannot be termed as perverse. Further, there is no revenue deficit muchless any loss. Hence, we do not think that the appeal deserves to be entertained. It does not raise any substantial question of law. Hence, the appeal is dismissed with no order as to costs.*"

7. By considering the totality of the facts and circumstances of the case, it appears that the appellants are engaged in the manufacture of excisable goods and also providing various services for which they are also registered with the Service Tax Department. The appellant has availed cenvat credit on inputs, capital goods and also input services and maintained a common account/Register, while discharging excise duty on the clearance of finished goods also service tax on output service, they utilized the cenvat credit from the input common pool account. When the amount was utilized from the common pool account, then cenvat credit is eligible as per ratio laid down in the above mentioned decision.

8. In view of the above, we set aside the impugned order and allow the appeal.

9. In the result, the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(V.Padmanabhan)	**(Justice Dr. Satish Chandra)**
Member (Technical)	**President**

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