

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

Excise Appeal No.1 of 2011

(Arising out of Order-in-Original No.35/Commr./10 dated 29.09.2010 passed by Commr. of Central Excise & Service Tax, Jamshedpur)

M/s Tata Steel Ltd.

Jamshedpur-831001

Appellant

VERSUS

CCEx. & S.Tax, Jamshedpur

143, New Baradwari, Sakchi, Jamshedpur-831001

Respondent

Appearance:

Dr.Samir Chakraborty, Sr.Advocate and Shri Abhijit Biswas, Advocate for the Appellant

Shri D.K.Acharya, Spl.Counsel for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.75367/2020

DATE OF HEARING : 15.01.2020

DATE OF PRONOUNCEMENT : 28.07.2020

Per P.K.Choudhary :

1. The present appeal is against the order dated September 29, 2010 passed by the Commissioner of Central Excise and Service Tax, Jamshedpur confirming an amount of Rs. 4,35,71,478/- against the appellant under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(2) of the Central Excise Act, 1944, along with interest under Section 11AB of the Act. Penalties of Rs. 4,35,71,478/- and Rs. 5,000/- have also been imposed upon the appellant under Rule 15(2) of the Cenvat Credit Rules read with Section 11AC of the Act and Rule 27 of the Central Excise Rules, 2002 respectively.

Excise Appeal No.01/2011

2. The appellant, a manufacturer of various types of dutiable iron and steel products, uses several duty paid input materials and avails various input services and avails and utilises cenvat credit of duty or service tax paid thereon in terms of the Cenvat Credit Rules. Since the said duty paid input materials and input services are used both in or in relation to the manufacture of dutiable and exempted goods respectively, the appellant is required to follow the provisions of Rule 6 of the Cenvat Credit Rules.
3. Rule 6(3) was substituted on March 1, 2008 by Notification No. 10/2008-CE(NT) with effect from April 1, 2008. A new sub-rule (3A) was also inserted in Rule 6 by the said Notification, which was made effective on and from April 1, 2008. In terms of the amended provisions, a manufacturer of goods or provider of output services who did not maintain separate accounts as provided for under Rule 6(2) of the Cenvat Credit Rules was given two options. In terms of Rule 6(3)(i) the manufacturer could make payment of an amount equal to 10% of the value of the exempted goods. However, in terms of Rule 6(3)(ii) of the Cenvat Credit Rules the manufacturer of goods could opt for paying an amount equivalent to the cenvat credit attributable to input and input services used in or in relation to the manufacture of the exempted goods subject to the conditions and procedure specified in Rule 6(3A) of the Cenvat Credit Rules. "*Explanation-I*" in the said substituted Rule 6(3) however made it clear that if a manufacturer of goods or provider of output services availed any of the options (i) or (ii) during a financial year, such option has to be exercised for all exempted goods manufactured by him and it cannot be withdrawn during the remaining part of the same financial year.
4. According to the appellant the amended provision of Rule 6(3) along with Rule 6(3A) of the Cenvat Credit Rules coming into effect on and from April 1, 2008, the procedure which had to be

Excise Appeal No.01/2011

followed as laid down in Rule 6(3A) required appreciation and working out before any option could be exercised by it and since this took some time, the appellant, in order that there is no contravention of the provisions of the Cenvat Credit Rules, continued to make payment as before, which was 10% of the value of the exempted goods, coal tar and CO gas (hereinafter referred to as the "said goods") as provided in the erstwhile Rule 6(3)(b) of the Cenvat Credit Rules for April 2008.

5. By a letter dated May 29, 2008 the appellant submitted the required intimation in the prescribed manner provided for in Rule 6(3A) of the Cenvat Credit Rules to the Range Superintendent wherein it was stated that the appellant proposed to exercise the option under Rule 6(3)(ii) on and from April 01, 2008 and since it had already made payment @10% for the month of April, 2008, in case of excess payment the appellant would file refund application whereas in case of short payment it would make payment of the balance amount due.
6. The Range Superintendent, however, raised a dispute that since the appellant had deposited specified amount equal to 10% of the value of the exempted goods for April, 2008, it had already exercised and availed option in terms of Rule 6(3)(i) of the Cenvat Credit Rules for the current financial year 2008-09 and hence could not withdraw the same and exercise option in terms of Rule 6(3)(ii) of the Cenvat Credit Rules. Correspondences were exchanged thereafter by and between the appellant and the said Range Superintendent on the issue without resolving the dispute. The appellant therefore unilaterally made determination of the amount payable as provided for under Rule 6(3A) of the Cenvat Credit Rules and effected payments in terms of Rule 6(3)(ii) of the Cenvat Credit Rules, for which it opted by the letter dated May 29, 2008, with effect from April 1, 2008.

Excise Appeal No.01/2011

7. On 29.09.2009 the Commissioner issued a show cause notice alleging that the appellant had contravened the provisions of Rule 6(3) of the Cenvat Credit Rules with intent to evade payment of a sum of Rs. 4,35,71,478/- during the period from September 2008 to March 2009, since the appellant having exercised option in terms of Rule 6(3)(i) of the Cenvat Credit Rules had subsequently, during the same financial year, altered the said option and followed the option in terms of Rule 6(3)(ii) read with Rule 3(A) of the Cenvat Credit Rules which was not permissible in terms of the *Explanation -I* of Rule 6(3) of the Cenvat Credit Rules. The show cause notice proposed recovery of the said amount of Rs. 4,35,71,478/- from the appellant under the provisions of Rule 14 of the Cenvat Credit Rules read with Section 11A of the Act, along with interest in terms of Rule 14 of the Cenvat Credit Rules read with Section 11AB of the Act. It also proposed imposition of penalties upon the appellant under Rule 15(2) of the Cenvat Credit Rules read with Section 11AC of the Act and Rule 27 of the Central Excise Rules, 2002 respectively.
8. Thereafter, upon the appellant filing its reply to the said show cause notice by a letter dated July 20, 2010 and a personal hearing held by the Commissioner, the impugned order was passed by the Commissioner. Being aggrieved thereby the instant appeal has been preferred by the appellant.
9. We have heard Dr. Samir Chakraborty, Senior Advocate and Mr. D.K. Acharya, Special Counsel on behalf of the appellant and the respondent respectively.
10. It has been contended on behalf of the appellant as follows:
 - (a) There has been compliance by the appellant with the requirement under Rule 6(3) of the Cenvat Credit Rules, in making reversals of cenvat credit during the said period in terms

Excise Appeal No.01/2011

of Rule 6(3)(ii) read with Rule 6(3A) of the Cenvat Credit Rules and findings to the contrary made in the impugned order are erroneous and untenable.

(b) The restriction provided under "*Explanation-I*" of not being able to withdraw the option during the remaining part of the financial year can arise only when a manufacturer has exercised such option with due intimation to the jurisdictional Central Exercise authority. This is evident from, inter alia, Rule 6(3A)(a) of the Cenvat Credit Rules. This provision specifically requires that while exercising the option to pay in terms of Rule 6(3)(ii) of the Cenvat Credit Rules a manufacturer has to provide/intimate in writing the Range Superintendent the particulars as detailed in the said sub-clause (a) of Rule 6(3A). The particulars detailed in the said sub-clause (a) of Rule 6(3A) of the Cenvat Credit Rules includes intimation of the date from which the option is being exercised or is proposed to be exercised.

(c) The requirement under Rule 6(3A)(a)(ii) of the Cenvat Credit Rules in clear terms indicate that a manufacturer can opt for the option under Rule 6(3)(ii) of the Cenvat Credit Rules at any point of time during a financial year, upon intimation to the Range Superintendent. Once such option is exercised by a manufacturer, the restriction as provided in "*Explanation-I*" of Rule 6(3) would become applicable and the manufacturer cannot withdraw from such option "during the remaining part of the financial year". This provision also indicates that the option can be exercised at any point of time during a financial year, but once exercised cannot be withdrawn during the remaining part of the said financial year.

(d) Though there is no such specific provision regarding intimation to the Range Superintendent or other Central Excise

Excise Appeal No.01/2011

authorities regarding exercise of option in terms of Rule 6(3)(i) of the Cenvat Credit Rules, a harmonious construction of the relevant provisions of Rule 6(3) and 6(3A) of the Cenvat Credit Rules makes it clear that exercise of option in terms of Rule 6(3)(i) has also to be specifically intimated to the jurisdictional Central Excise authority and in the absence thereof it cannot be said that a manufacturer has chosen to exercise the option in terms of Rule 6(3)(i) of the Cenvat Credit Rules.

(e) In the impugned order it has been held that since the appellant had paid 10% on clearances of the subject exempted goods during the months April, 2008 to August, 2008 it had to be taken that it had exercised to avail the option in terms of Rule 6(3)(i) of the Cenvat Credit Rules and hence in terms of *Explanation-I* thereof the appellant could not withdraw therefrom and adopt the option provided under Rule 6(3)(ii) of the Cenvat Credit Rules during the said period. This finding has been arrived at incorrectly/by overlooking and/or by ignoring the relevant materials on record, including the circumstances under which the appellant had to make the payments, including the relevant correspondence of the appellant on record prior to October, 2008.

(f) The issues involved herein stand settled by the following decisions of the Tribunal in favour of the appellant's contentions:

- (i) Mercedes Benz India (P) Ltd. Vs. Commissioner of C.Ex., 2015 (40) STR 381 (T)
- (ii) Aster Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., 2016 (43) STR 411 (T)
- (iii) Tara Technologies Ltd. Vs. CCE, 2016 (42) STR 290 (T)
- (iv) Ankit Packaging Ltd. Vs. Commissioner of Central Excise, 2004 (165) ELT 228 (T-LB).

Excise Appeal No.01/2011

(g) In any event, Rule 6(3) cannot be made automatically applicable on failure to intimate in writing about option to be availed by an assessee. It is upto the assessee to avail a particular option and Revenue cannot insist on availment of a particular option or make demand under Rule 6(3)(1), no such power being conferred either under the Cenvat Credit Rules or the Central Excise Act. In support, reliance has been placed on:

- (i) Tiara Advertising Vs. Union of India, 2019 (30) GSTL 474 (Telengana)
- (ii) Reliance Life Insurance Co. Ltd. Vs. Commr. of Service Tax, 2018 (363) ELT 1050 (T).

(h) There being complete compliance with the relevant provisions, the appellant had correctly and legally availed the option under Rule 6(3)(ii) and consequently the impugned order, the demand of amount confirmed thereby and the penalties imposed are contrary to law, bad and liable to be set aside.

11. Mr. D.K. Acharya, Learned Special Counsel, supporting the findings of the Commissioner and reiterating the same, submitted that it is a fact on record that the appellant had exercised the option of availing Rule 6(3)(i) of the Cenvat Credit Rules for the year 2008-09 by making payment as per the said provision in April 2008 and thereafter and, hence, was barred from altering the said option during the said financial year, as specifically provided for in *Explanation I* of Rule 6(3) and, therefore there was no infirmity in the impugned order.
12. Rule 6(3) of the Cenvat Credit Rules, 2004, as in force during the material period read as follows:

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service,

Excise Appeal No.01/2011

opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-

- (i) the manufacturer of goods shall pay an amount equal to ten percent of value of the exempted goods and the provider of output service shall pay an amount equal to eight percent of value of the exempted services; or*
- (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).*

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service."

12.1 The relevant part of Rule 6(3A) of the Cenvat Credit Rules 2004 read as follows:

"(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

- (a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the*

Excise Appeal No.01/2011

Superintendent of Central Excise giving the following particulars, namely:-

- (i) name, address and registration No. of the manufacturer of goods or provider of output service;*
- (ii) date from which the option under this clause is exercised or proposed to be exercised;*
- (iii) description of dutiable goods or taxable services;*
- (iv) description of exempted goods or exempted services;*
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition."*

13. This issue came up for consideration before a Co-ordinate Bench of the Tribunal in Mercedes Benz India (P) Ltd. Vs. Commissioner of C.Ex. (supra). In this case the allegation was that the assessee while reversing the amount of cenvat credit and paying the interest had not followed the procedure as laid down in sub-rule 3A(a) and (b) of the Cenvat Credit Rules respectively, inasmuch as they had neither exercised these option by intimating the same in writing to the Superintendent of Central Excise giving required particulars nor had they determined and paid any amount provisionally for every month. Thus by not following laid down procedure as envisaged the assessee becomes liable to calculate and pay amount equivalent to 5% of the value on exempted services. Dealing with this issue it was observed and held as under:

"5.1 We have observed that in rule 6(3) prevalent at the relevant time, two options have been provided:

- (i) Payment of 5% on value of exempted services.*
- (ii) Payment of an amount equal to the cenvat credit amount attributed to input services used in or in relation to*

Excise Appeal No.01/2011

manufacture of exempted goods or provision of exempted services as provided under sub-rule (3A)(b).

It is observed that the appellant has availed the option provided under sub-rule (3)(ii) of Rule 6 and paid an amount as per sub-rule (3A) alongwith interest and intimated the same to the jurisdictional Superintendent in writing vide letter dated 14-3-2012. From the perusal of the said letter, we observed that the appellant categorically stated in the said letter that payment of cenvat credit, which they have made alongwith interest is in accordance with Rule 6(3A) of Cenvat Credit Rules. With this act of the appellant, it is clear that the appellant opted for the option as provided under Rule 6(3)(ii) of the Cenvat Credit Rules, 2004, in accordance to which, the appellant is supposed to pay an amount equivalent to cenvat credit on input service attributed to the exempted service in terms of Rule 6(3A). In the present case, the appellant has availed cenvat credit in respect of common input services, which has been used in relation to the manufacture of the final product as well as for trading of bought out cars. Therefore they are supposed to pay an amount equivalent to cenvat credit which is attributed to the input service used for exempted service, i.e., sale of car. In our view, three options have been provided under Rule 6(3) and it is up to the assessee that which option has to be availed. Revenue could not insist the appellant to avail a particular option. In the present case the appellant have admittedly availed option as provided under Rule 6(3)(ii) and paid an amount as required under sub-rule (3A) of Rule 6. As regards the compliance of the procedure and conditions as laid down for availing option as provided under sub-rule (3)(ii), we find that foremost condition is that the appellant is required to pay an amount as per the formula provided under sub-rule (3A) on monthly basis. However, we find that as per the provision, payment on monthly basis is provisional basis. Therefore it is not mandatory that

Excise Appeal No.01/2011

whole amount or part of the amount was required to be paid on every month. The appellant though belatedly calculated the amount required to be paid in terms provided under sub-rule (3A) of Rule 6, therefore to fulfil the condition, assessee should pay the said amount, which has been complied by the appellant.

5.2 As regards the delay in payment, if any, the appellant have discharged the interest liability on such delay. Regarding the compliance as provided under Clause (a) of sub-rule (3A) of Rule 6 the appellant while exercising this option is required to intimate in writing to the Jurisdictional Superintendent, Central Excise, the following particulars namely:

- (i) Name, address and registration No. of the manufacturer of goods or provider of output service;*
- (ii) Date from which the option under this clause is exercised or proposed to be exercised;*
- (iii) Description of dutiable goods or taxable services;*
- (iv) Description of exempted goods or exempted services;*
- (v) Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition.*

As per the submission of the appellant and perusal of their letter alongwith enclosed details, it is found that more or less all these particulars were intimated to the Jurisdictional Superintendent. The appellant has been filing their returns regularly on monthly basis to the department. On perusal of the copies of the such return submitted alongwith appeal papers, it is observed that the particulars, as required under clause (a) of sub rule (3A) of Rule 6 has been produced to the Range Superintendent. Therefore all the particulars which are required to be intimated to the

Excise Appeal No.01/2011

Jurisdictional Superintendent while exercising option stand produced. Though these particulars have not been submitted specifically under a particular letter, but since these particulars otherwise by way of return and some of the information under their letters has admittedly been submitted, we are of the view, as regard this compliance of Rule 6(3A), it stood made.

5.3 As regard the contention of the adjudicating authority that this option should be given in beginning and before exercising such option, we are of the view that though there is no such time limit provided for exercising such option in the rules but it is a common sense that intention of any option should expressed before exercising the option, however the delay can be taken as procedural lapse. We also note that trading of goods was considered as exempted service from 2011 only, thus it was initial period. We are also of the view that there is no condition provided in the rule that if a particular option, out of three options are not opted, then only option of payment of 5% provided under Rule 6(3)(i) shall be compulsorily made applicable. Therefore we are of the view that Revenue could not insist the appellant to avail a particular option. In the present case admittedly it is appellant who have on their own opted for option provided under Rule 6(3)(ii). The meaning of the option as argued by the Ld. Sr. Counsel is that 'option of right of choosing, something that may be or is chosen, choice, the act of choosing'. From the said meaning of the term 'option', it is clear that it is the appellant who have liberty to decide which option to be exercised and not the Revenue to decide the same."

(emphasis added)

- 13.1 Following this decision, in the case of Aster Pvt. Ltd. Vs. Commissioner of Customs & C.Ex. (supra), it has been held by another Bench of the Tribunal as follows:

Excise Appeal No.01/2011

"6. For better appreciation, relevant part of Rule 6(3A) is reproduced as under:

Rule 6(3A) : For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

- (i) name, address and registration No. of the manufacturer of goods or provider of output service;*
- (ii) date from which the option under this clause is exercised or proposed to be exercised;*
- (iii) description of dutiable goods or taxable services;*
- (iv) description of exempted goods or exempted services;*
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.*

The above Rule 6(3A) states that while exercising the option, the manufacturer of goods or the provider of output service shall intimate in writing the department regarding the option exercised. In the present case, admittedly there is no intimation given by the appellant informing his exercise of option. The contention of the department is that when the appellant has not intimated his option in writing then the appellant is bound to pay the duty amount calculated under the first option. I am afraid I cannot endorse this contention. The said rule does not say that on failure to intimate, the manufacturer/service provider would lose his choice to avail second option of reversing the proportionate credit. Rule 6(3A), as seen expressly stated is

Excise Appeal No.01/2011

nothing but a procedure contemplated for application of Rule 6(3). Therefore, the argument of the Revenue that the requirement to intimate the department about the option exercised is mandatory and that on failure, the appellant has no other option but to accept and comply Rule 6(3)(i) and make payment of 5%/10% of sale price of exempted goods/value of exempted services is not acceptable or convincing. The rule does not lay down any such restriction. The procedure and conditions laid in Rule 6(3A) is intended to make Rule 6(3) workable and not to take away the option available to the assessee. In any case, at no stretch of imagination can it be said that on failure to intimate the department, Rule 6(3)(i) would automatically come into application.

7. In support of their arguments, the appellants have placed reliance on the judgment passed by Co-ordinate Bench of CESTAT in Mercedes Benz India (P) Ltd. Vs. CCE, Pune-1 [2015-TIOL-1550-CESTAT-MUM = 2015 (40) S.T.R. 381 (Tribunal)]. The issue under consideration is squarely covered by the said judgment In Rathi Daga Vs. CCE, Nashik [2015 (38) S.T.R. 213 (Tri-Mum)] and Foods, Fats & Fertilisers Ltd. Vs. CCE, Guntur [2009 (247) E.L.T. 209 (Tri-Bang) = 2011 (22) S.T.R. 484 (Tribunal)], it has been held that the condition in Rule 6(3A) to intimate the department is only a procedural one and that such procedural lapse is condonable and denial of substantive right for such procedural failure is unjustified. Taking into account the facts, evidence and following the precedents cited above, I am of the view that the demand raised is not legal and proper."

14. Both the above decisions are applicable on all fours to the instant case. There is no requirement under Rule 6(3)(i) and Rule 6(3A) of the Cenvat Credit Rules that the option had to be exercised on the first day of the financial year or the first month thereof. On the contrary, the said provisions clearly indicate that

Excise Appeal No.01/2011

such option could be exercised at any point of time during a financial year by a manufacturer. The only restriction under Explanation-I of Rule 6(3) is that once such option is exercised, the same has to be continued with during the remaining part of the financial year. In this respect reference may also be made to the Larger Bench decision of the Tribunal in Ankit Packaging Ltd. Vs. CCE (supra). This case involved the issue as to whether an assessee who paid duty at the normal rate at the commencement of the financial year under the provisions of Notification 1/93 and thereafter was eligible to avail the benefit of the said notification during the same financial year if he satisfies other conditions. In paragraph 5 of the order it was observed, inter alia, as follows:

"....."

The only question is whether payment of duty on some goods cleared in the beginning of the financial year could be considered as de facto opting out of the benefit of the exemption notification. We find no warrant for such a view. The notification calls for specific opting out by a manufacturer. There was no requirement to opt in. In the present case, the assessee has also written to the department informing that it was wanting to avail the exemption notification. In the face of such opting in, there was no justification for interpreting the payment of duty on some goods as opting out. Moreover, the assessee has also explained his reason for clearing some goods on payment of duty at the beginning of the financial year; it required some time to compute the aggregate value of the clearances made during the preceding financial year, so as to be sure that it had not exceeded the qualifying value limit during the preceding financial year. Thus, paying duty on the goods cleared during the opening days of the Financial Year was only erring in favour of the revenue and not foregoing an exemption. Such caution in an assessee cannot be turned against him....."

Excise Appeal No.01/2011

15. The correspondence on record of the appellant with Range Superintendent exchanged during the period May 2008 to June 2008, clearly establishes that the appellant had never exercised at any point of time during the period 2008-09 the option in terms of Rule 6(3)(i) of the Cenvat Credit Rules prior to May 2008. The Commissioner has therefore erred in holding that it is on record that the appellant had exercised the option under Rule 6(3)(i) of the Cenvat Credit Rules in the instant case. There is no document disclosed either in the show cause notice or in the impugned order which evidences exercising of such option by the appellant. Exercising an option is a positive act and cannot be inferred as has been sought to be done by the Commissioner and submitted by the Ld. Special Counsel.
16. Hence, following the principle laid down in the abovestated orders of the Tribunal it is conclusive that there has been due compliance by the appellant of the requirements under rule 6(3) and (3A), including the procedure laid down therein and the appellant has legally and validly availed the option in terms of Rule 6(3)(ii). The Commissioner has therefore erred in holding that the appellant had not fulfilled the conditions of procedure laid down in Rule 6(3) and Rule 6(3A) of the Cenvat Credit Rules and that the appellant was not entitled to avail option under Rule 6(3)(ii) of the Cenvat Credit Rules.
17. Even otherwise, the demand confirmed under Rule 6(3)(i) of the Cenvat Credit Rules by the Commissioner choosing such option in the show cause notice cannot be sustained, as held in the aforesaid decisions.
- 17.1 Further, in the case of Tiara Advertising Vs. Union of India (supra), the Hon'ble Telengana High Court's Division Bench, dealing with this issue has held as follows:

Excise Appeal No.01/2011

"14. Further, we may reiterate that Rule 6(3) of the Cenvat Credit Rules, 2004, merely offers options to an output service provider who does not maintain separate accounts in relation to receipt, consumption and inventory of inputs/input services used for provision of output services which are chargeable to duty/tax as well as exempted services. If such options are not exercised by the service provider, the provision does not contemplate that the Service Tax authorities can choose one of the options on behalf of the service provider. As rightly pointed out by Sri S. Ravi, Learned Senior Counsel, if the petitioner did not abide by the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, it was open to the authorities to reject its claim as regards the disputed cenvat credit of Rs.17,15,489/-.

15. We may also note that in the event the petitioner was found to have availed cenvat credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilised wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-in-Original, to the extent that it proceeded on these lines, therefore cannot be countenanced."

17.2 Similar has been held by a Co-ordinate Bench of the Tribunal in Reliance Life Insurance Co. Ltd. Vs. Commr. of Service Tax (supra), para 5.

18. We are in respectful agreement with the aforesaid decisions and, following them, hold that the impugned order of the Commissioner is unsustainable and is liable to be set aside. The

Excise Appeal No.01/2011

amount confirmed thereby against the appellant and the penalties imposed also cannot be sustained.

19. In view of the aforesaid, the impugned order dated 29.09.2010 passed by the Commissioner is set aside and the appeal is allowed, with consequential relief.

(Pronounced in the open court on 28.07.2020)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(P. Anjani Kumar)
Member (Technical)

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