IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.75639 of 2017

(Arising out of Order-in-Original No.05/COMMR/ST-AUDIT/KOL/2016-17 dated 16.01.2017 passed by Commissioner of Service Tax Audit, Kolkata.)

M/s. Technico (India) Private Limited
(3, B.B.Ganguly Street, Kolkata-700012.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate
.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

NONE for the Appellant (s)

Shri Mihir Ranjan, Special Counsel for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75547/2024

DATE OF HEARING : 19.03.2024
DATE OF DECISION : 19.03.2024

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein demand has been raised against the appellant for violation of the provisions of Rule 6(3) of Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant was engaged in the activity of trading as well as erection, commissioning and installation services and was availing Cenvat Credit on input/input services and not

maintaining separate account for their input/input services used for providing taxable services as well as exempted services. Therefore, in terms of Rule 6(3) of the Rules, as the appellant was not maintaining separate account for input and input services which were used in providing taxable as well as exempted services, a show cause notice was issued to the appellant to demand under Rule 6(3) of Cenvat Credit Rules, 2004, an amount equal to 6%/8% of the value of exempted goods during the period 2011-2015. The matter was adjudicated, demand @5%/6% and 8%/10% of the exempted service was confirmed. Against the said order, the appellant is before us challenging the demand made against the appellant under Rule 6(3) of Cenvat Credit Rules, 2004.

3. None appeared on behalf of the appellant. The appeal has been taken up for consideration.

4. We find that in this case, demand sought to be confirmed against the appellant under Rule 6 of the Cenvat Credit Rules, 2004 for not maintaining separate account of input/input services during the impugned period and the amount sought to be recovered @ 5%/6% and 8%/10% of the exempted services. It is the submission of the appellant that no demand can be raised under Rule 6 of the Cenvat Credit Rules, 2004 for non-maintaining of separate account for input/input services for providing taxable as well as exempted services. Demand can be raised under Rule 14 of the Cenvat Credit Rules, 2004. To support this issue, the appellant has relied on the decision of Hon'ble Telegana High Court in the case of Tiara Advertising vs. UOI [2019 (30) G.S.T.L. 474 (Telengana)].

5. On the other hand, the Ld.Special Counsel, appearing on behalf of the Revenue contested the issue and submits that it is an admitted fact that the appellant is not maintaining separate account of input/input services used for providing taxable as well as exempted services. Therefore, in terms of Rule 6(3) of the Cenvat Credit Rules, 2004, the appellant is liable to pay Service Tax @ 5%/6% and 8%/10% of the exempted services provided by them.

6. Heard the Ld.Special Counsel for the Revenue and gone through the decision in the case of Tiara Advertising vs. UOI, cited (supra), wherein the Hon'ble High Court has observed as under:-

> ***"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."*

7. As held by the Hon'ble Telengana High Court that if the appellant has taken Cenvat Credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowers the authorities to recover such credit availed by the assessee wrongly. Admittedly in this case, no demand has been raised against the appellant under Rule 14 of the Cenvat Credit Rules, 2004. Therefore, relying on the decision of the Hon'ble Telengana High Court in the case of Tiara Advertising vs. UOI (supra), we hold that the

demands are not sustainable against the appellant, therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm