IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/85134/2017

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-265-16-17 dated 27.10.2016 passed by Commissioner of Service Tax (Appeals), Pune)

Suyash Auto-Press Components & Assemblies P.Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Pune-III **Respondent**

Appearance:

Shri Prasad Kshirsagar, C.A., for appellant
Shri S.J. Sahu, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 19.4.2018
Date of Decision: 19.4.2018

ORDER No. **A/86075/2018**

The facts of the case are that the appellant is engaged in the manufacture of bodies for motor vehicles and motor vehicle parts falling under Chapter sub-heading No.87071000 and 87089900 respectively, of the Central Excise Tariff Act, 1985. They availed cenvat credit on the input such as steel sheets and other inputs as well as on the input services. In some of the cases, they sell their input i.e. steel sheets on payment of duty to their vendor on sale basis. The vendor availed the credit of the duty so paid by the appellant and after manufacturing of the component, the same is returned back to the appellant on payment of duty on sale basis. The appellant in turn availed the credit of the said manufactured component and thereafter used in the manufacture of their sub-assembly and the said sub-assembly is cleared on payment of duty. The case of the department is that the sale of the steel sheets to the vendor is a trading activity. Therefore, the appellant is liable to pay 5% / 6% on the value of the traded goods. Accordingly, the demand under Rule 6(3) of the Cenvat Credit Rules, 2004 was confirmed and equal amount of penalty was also imposed under Section 11AC. The appellant, being aggrieved by the order-in-original, filed an appeal before the Commissioner (Appeals) which came to be rejected. Therefore, the appellant is before me.

2. Shri Prasad Kshirsagar, learned Chartered Accountant appearing on behalf of the appellant submits that they are removing the input as such under Rule 3(5) of the Cenvat Credit Rules, 2004 on payment of excise duty which is equal to the cenvat credit. Therefore, Rule 6(3) should not be applied and accordingly the demand is not sustainable. He placed reliance on the following judgments:-

(i) *CCE, Ahmedabad-II vs. Inductotherm (I) Pvt. Ltd. – 2013 (1) ECS (26) (Guj-HC)*;

(ii) *AR Casting (P) Ltd. vs. CCE&ST, Chandigarh – (Service Tax Appeal No.580/2008) (Tri.-Delhi)*;

(iii) *Chitrakoot Steel and Power Pvt. Ltd. vs. CCE – 2008 (125) ECC 188 (Tri.-Chennai)*.

3. Shri S.J. Sahu, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the finding of the impugned order. He emphasizes on para 6 of the impugned order. He further submits that all the judgments relied upon by the appellant have been dealt with by the learned Commissioner (Appeals) and the same have been distinguished.

4. I have carefully considered the submissions made by both the sides and perused the records. The Revenue has demanded the amount under Rule 6 equal to 5% / 6% of the value of the traded goods i.e. steel sheets sold to their vendor. There is no dispute that the said removal is governed by Rule 3(5) of the Cenvat Credit Rules, 2004. It is admitted fact that the appellant has cleared the said steel sheets on payment of duty. The department is considering the said clearances as exempted service being a trading activity. I find that though this removal of steel sheets is indeed a trading activity, but the said clearances were made on payment of excise duty. Therefore, it cannot be considered as an exempted service. Rule 6 applies on the trading activity only in a case when the goods are purchased and sold without taking credit and without payment of duty. Then only such trading will be considered as exempted service. In the present case, the

removal of input under Rule 3(5) was made admittedly on payment of duty. Therefore, there is no case of trading activity which is an exempted service. Accordingly, there is no application of Rule 6(3) of the Cenvat Credit Rules, 2004. Accordingly, the impugned order is set aside. The appeal is allowed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

tvu