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

Appeal No. E/87862 & 87864/2018

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-296-17-18 dated 07.03.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Nashik).

M/s Gal Aluminium Extrusion Pvt. Ltd.	Appellant

Vs.

Commissioner of CGST & Central Excise, Nashik	Respondent

Appearance:

Shri S.B. Awate, Consultant	for Appellant

Mrs. Anuradha S Parab, AC (AR) & Shri Anil Choudhary, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 30.01.2019

Date of Decision: 30.01.2019

ORDER NO. **A/85246-85247/2019**

Per: Dr. D.M. Misra

These two appeals are filed against Order-in-Appeal No. NSK-EXCUS-000-APPL-296-17-18 dated 07.03.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Nashik.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods namely,

Aluminium Extruded profile/Tubes & Pipes/Bars & Rods etc. falling under Chapter 76 of Central Excise Tariff Act, 1985. They have availed CENVAT Credit of duty paid on inputs and Service Tax paid on various input services during the relevant period. Alleging that common input services were used in the repair and maintenance of windmill situated away from their factory during the period March, 2015 to May, 2015, demand notices were issued to them under Rule 6 of CENVAT Credit Rules, 2004 since they failed to maintain separate account of use of common input services. On adjudication, the demands of Rs.75,976/- and Rs. 4,65,362/- were confirmed with interest and penalty. Aggrieved by the said order, they filed appeals before the learned Commissioner (Appeals), who in turn, rejected the Appeals. Hence, the present appeals.

3. Learned consultant for the appellant submits that even though before the original adjudicating authority as well as before the learned Commissioner (Appeals) they have categorically and vehemently argued that common input services were not utilized in the generation of electricity at their windmill, however, invoking Rule 6 of CENVAT Credit Rules, 2004 demands have been confirmed. He, thus, submits that they have enough evidence to establish that input service on which credit availed were not used in the maintenance and repair of the windmill. Therefore, the demand under Rule 6 of CENVAT Credit Rules, 2004 is unsustainable in law.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals). She has specifically drawn my

attention to para 16 of the impugned order, wherein the learned Commissioner (Appeals) observed that the appellant had failed to prove that common input services were not used in the maintenance and repair services of the windmill.

5. Heard both sides and perused the records.

6. Applicability of Rule 6 of the CENVAT Credit Rules, 2004 squarely rests on the fact that whether the appellant availed CENVAT Credit on input services and used it for providing exempted services. In the present case, demand notices have been confirmed on the premise that the appellant have utilized common input services in the manufacture of dutiable goods and maintenance and repair of windmill. The contention of the learned Consultant for the appellant that in repair and maintenance of windmill situated away from the factory used for generation of electricity and ultimately consumed in the manufacture of excisable goods, no input services were used for such purpose and they had not availed credit on the same. The learned Commissioner (Appeals) categorically recorded the findings that the appellant failed to produce evidence to substantiate that credit availed on input services were not used exclusively in repair and maintenance of Wind Mills used for generation of electricity, which the appellant controverted before this Tribunal placing evidences. I am of the view that these evidences need to be scrutinized since not produced before the adjudicating authority.

7. In the result, the impugned orders are set aside and the appeals are allowed by way of remand to the adjudicating authority to ascertain the claim by the appellant and pass an appropriate order accordingly. All issues are kept open. The Commissioner (Appeals) order is modified to the above extent. Appeals are allowed by way of remand.

(Dictated and pronounced in the Court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha