CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Appeal No. ST/85600/2014

(Arising out of Order-in-Original No. 40/ST/Commr/2013 dated 30.12.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Deogiri Nagari Sahakari Bank Ltd. **Appellant**
Arth Complex,
Kesaringpura Adalat Road,
Aurangabad 431 005.

Vs.

Commissioner of Central Excise Aurangabad **Respondent**
Town Centre N-5 CIDCO,
Aurangabad 431 003.

Appearance:

Shri R.S. Indani, Advocate for the Appellant
Shri M. Suresh, Authorised Representative for the Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/85796/2019**

Date of Hearing: 25.01.2019
Date of Decision: 25.01.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No 40/ST/Commr/2013 dated 30.12.2013 passed by the Commissioner Central Excise, Customs and Service Tax Aurangabad. By the said order Commissioner held as follows:

"(a) I confirm amount of Rs 6,53,84,103/- against the assessees in terms of Explanation III under Rule 6(3) of CENVAT Credit Rules, 2004 read with Rule 14 of CENVAT

Credit Rules , 2004 and proviso to Section 73(1) of the Finance Act, 1994.

(b) I order recovery of interest on the aforesaid amount of Rs 6,53,84,103/- from the assessee under Rule 14 from the assessee under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.

(c) I impose Penalty of Rs 6,53,84,103/- on the assessee under Rule 15(4) {Rule 15 (3) w.e.f 27.02.2010} of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994."

2.1 Appellants had Centralized Registration for providing taxable services under the category of "Banking and Financial Services" as defined under Section 65(12) of the Finance Act, 1994.

2.2 Appellants were providing both taxable and exempted services. They were paying the Service Tax in respect of taxable services. They were availing CENVAT Credit in respect of input services received by them for providing output service. They had availed the CENVAT Credit in respect of common input services used for providing taxable and exempted services.

2.3 On scrutiny of the ST-3 returns filed by the appellant, it was observed that for the years 2008-09 to 2010-11 they had

- o availed and utilized the CENVAT Credit in respect of input services used for providing both taxable and exempted services.
- o no amount was shown against column F(1)(c)(ii) i.e. *"Amount received (paid) towards exempted service".*
- o Against column 5A(a) i.e. *"Whether providing any exempted or non taxable service?" they had stated that they did not maintain separate accounts and inventories in term of Rule 6(2) of the CENVAT Credit Rules, 2004.*

2.4 They had not filed any intimation regarding their option to follow the procedure prescribed in Rule 6(3)((ii) read with sub-rule (3A) of Rule 6 of the CENVAT Credit Rules, 2004.

2.5 Thus appellants were required to an amount equal to 8% (6% w.e.f 07.07.2009) of the value of exempted services provided by them.

2.6 After completion of investigations, a show cause notice dated 14.06.2013 was issued to Appellant asking them to show cause as to why-

a. An amount of Rs 6,53,84,103 should not be recovered from them under the provisions of Explanation III under Rule 6(3) read with Rule 14 of CENVAT Credit Rules, 2004 and proviso to section 73(1) of the Finance Act, 1994.
b. Interest should not be recovered on the aforesaid amount under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.
c. Penalty should not be imposed under Rule 15(4) {Rule 15(3) w.e.f 27.02.2010} of CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.
d. Penalty should not be imposed under Rule 15A of CENVAT Credit Rules, 2004.

2.7 After considering the submissions made by the appellants and affording them an opportunity of personal hearing Commissioner adjudicated the matter as per order referred in para 1, supra.

2.8 Aggrieved by the order of Commissioner, they have filed this appeal before us.

3.1 In their appeal they have challenged the impugned order on following grounds-

i. They were under bonafide belief that they were entitled to avail whole of the Credit as first time sub-rule (3B) to Rule 6 was inserted by Notification No 3/2011-CE (NT), restricting the Credit availment by Banking and Financial Services providers.

ii. In case of Hello Mineral water Pvt Ltd vs UOI [2004) 174 ELT 422 (All)] it has been held that reversal of proportionate credit subsequently would be sufficient for the purpose of fulfillment of obligation under Rule 6.

iii. Demand made for extended period is not sustainable, as they were under a bonafide belief that they were eligible to take the entire credit. They had not willfully suppressed the fact that to with the intent to evade payment of taxes any facts from the department. They rely on the following authorities in their support:

   a. Bridgestone Financial Service P2007 (8) STR 505 (T-Bang)
   b. Pushpam Pharmaceuticals {1995 (78) ELT 401 (SC)
   c. Continental Foundation Joint Venture [2007 (216) ELT 177 (SC)
   d. Infinity Infotech Parks Ltd [2013 (31) STR 653 (Cal)]

iv. They had paid back the credit availed on other than the 16 specified services along with interest even prior to issue of show cause notice, and hence they had no intention to evade payment of taxes.

v. Since they are not required to pay any amount no interest is demandable.

vi. Since they had no intention to avail the ineligible credit the penalty imposed on them is not justified.

4.1 We have heard Shri R S Indani, Advocate for the Appellant and Shri M. Suresh, Joint Commissioner Authorized Representative for the revenue.

5.1 We have considered the submissions made by the appellants in appeal and during the course of argument along with impugned order.

5.2 We find the issues raised in the present appeal are identical to those decided by CESTAT in case of-

i. UCO Bank [2014 (36) STR 1169 (T-Kol)]

ii. HDFC Bank Ltd [2018-TIOL-3516-CESTAT-MUM]

5.3 Para 5, 11 & 12 of the decision in case of HDFC Bank where the issues for consideration and the findings of the bench have been recorded is reproduced below:

"5.0 We have considered the submissions made. Issues involved in the Appeal are as follows-

i. Whether the income earned from Cash Credit, Over Draft and Bill Discounting would be regarded as exempted service under Rule 2(e) of CENVAT Credit Rules, 2004;
ii. Whether the Appellant would be required to reverse the CENVAT credit availed in respect of CC/ OD services;
iii. Whether the demand is barred by limitation.
iv. Whether the Interest under section 75 demandable from the Appellants.
v. Whether in facts and circumstances of the case Commissioner was justified in imposing the penalty on Appellants.

11.0 Thus we answer the questions framed in para 5, as follow:

i	***Whether the income earned from Cash Credit, Over Draft and Bill Discounting would be regarded as exempted service under Rule 2(e) of CENVAT Credit Rules, 2004;***	***Yes.***
ii	***Whether the Appellant would be required to reverse the CENVAT credit availed in respect of CC/ OD services;***	***Yes***
iii	***Whether the demand is barred by limitation.***	***To be reconsidered***

iv	***Whether the Interest under section 75 demandable from the Appellants.***	***Yes but to be re-determined***
v	***Whether in facts and circumstances of the case Commissioner was justified in imposing the penalty on Appellants.***	***Yes but to be re-determined***

12.0 Appeal filed is accordingly allowed by remand to adjudicating authority to consider the matter only on the ground of limitation and re-determine the amount of CENVAT Credit to be reversed under Rule 6(3A)(c) along with the interest under Section 75 and penalties to be imposed."

5.4 Since the issue is no longer res-integra and covered by the earlier decisions of tribunal, we respectfully follow the earlier orders, and remand this matter back to the adjudicating authority to reconsider the issue of limitation. In respect of all other issues including interest and penalties we agree with the findings in the impugned order subject to re-quantification of same depending on the findings on the issue of limitation.

6.1 Appeal filed is accordingly allowed by remand to adjudicating authority to consider the matter only on the ground of limitation and re-determine the amount of CENVAT Credit to be reversed along with the interest under Section 75 and penalties to be imposed.

(Order pronounced in the open court)

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

(Sanjiv Srivastava)
Member (Technical)

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