CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87742 OF 2018

[Arising out of Order-in-Original No. 02/COMMR/(Dr.KNR)/CGST&CEX/MC/ 2018-19 dated 26th April 2018 passed by the Commissioner of CGST & Central Excise, Mumbai Central).]

The Tata Power Company Limited
B Block, Camac Bunder Sant Tukaram Road, Masjid,
Mumbai 400009 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road
Opp: Churchgate Station, Mumbai **…*Respondent***

APPEARANCE:

Shri Jitendra Motwani, Advocate and Ms Anshu Shah, Advocate for the appellant
Shri Nitin M Tagade, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85254 /2023

DATE OF HEARING:	23/08/2022
DATE OF DECISION:	23/02/2023

PER: C J MATHEW

The short point in this appeal of M/s Tata Power Company Limited, impugning the order[1] of Commissioner of CGST & CEX,

[1] [order-in-original no. 02/COMMR/(Dr KNR)/CGST & CEX/MC/2018-19 dated 26th April 2018]

Mumbai Central, is the finding of ineligibility, on account of lack of 'nexus' with 'output service', to credit of ₹ 57,38,354 availed for 2007-08 to 2010-11 and disallowance of credit of ₹ 11,01,38,756 for having been availed, and long after service had been received for 2004-05 to 2010-11, in June 2012.

2. The appellant had, admittedly, availed credit of tax included in eight invoices, raised by M/s Tata Sons Ltd between 7th June 2005 and 20th June 2011 for ₹ 107,28,83,250 on them, towards charges for using the 'TATA' brand liable to tax in the hands of the latter for having rendered taxable service under section 65(105)(zzr) of Finance Act, 1994, of 'intellectual property service' as defined in section 65 (55b) of Finance Act, 1994 only in June 2012 as reflected in the returns filed by them. The payment under 'Brand Equity Promotion Agreement' was charged as subscription at the rate of 0.25% of the annual income of the appellant for each year. Also, admittedly, the appellant had been providing both taxable and exempt services during the impugned period which, by special dispensation of rule 6 (5) of CENVAT Credit Rules, 2004 that was since rescinded with effect from 1st April 2011, did not limit the extent of credit that could be availed on procurement of the impugned service. The relatively lesser amount in dispute pertained to tax charged by providers of 'taxable service' that were held to be ineligible for not being in conformity with 'input service' that alone were eligible in accordance with rule 3

of CENVAT Credit Rules, 2004.

3. According to Learned Counsel for the appellant, the show cause notice had, in addition to the issue of elapse of time in availing the credit which found resonance in the impugned order, also charged the appellant with ineligibility arising from the rescinding of rule 6 (5) of CENVAT Credit Rules, 2012 that the adjudicating authority held to be of irrelevance in the impugned order. The sole contention of Learned Counsel for the appellant on the elapse of time in availing credit was undeniability of their entitlement, consequent to tax being charged from them by provider of service, under rule 3 of CENVAT Credit Rules, 2004 and the lack of any bar of limitation there. Reliance was placed by him on the decision of the Hon'ble High Court of Punjab & Haryana in *Industrial Cables v. Commissioner of Central Excise, Chandigarh [2009 (1) TMI–HC (P&H)]*, of the Hon'ble High Court of Allahabad in *Collector of Central Excise, Allahabad v. Ram Swarup Electricals Ltd [2007(5)TMI 116-HC(Allahabad)]*, of the Tribunal in *Commissioner of Central Excise, Ahmadabad v. Lubi Electronics [2009(1)TMI 211-CESTAT Ahmedabad]* and in *Neon News Pvt Ltd v. Commissioner of Central Excise & Service Tax, Agra [2018(9)TMI 1516-CESTAT, Allahabad]* and of the Hon'ble Supreme Court in *Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd [1999 (112) ELT 353 (SC)]*.

4. Before adverting to the response of Learned Authorised

Representative, there are two aspects that we would prefer to get on record at this stage. As contended by Learned Counsel, the adjudicating authority had discarded the relevance of rule 6(5) of CENVAT Credit Rules, 2004 insofar as the impugned proceedings were concerned. There is no appeal, or memorandum of cross-objection in response, by the respondent-Commissioner of GST & Central Excise on this finding and, not surprisingly, as that ground in the notice will not find sustenance in law. Rule 6 of CENVAT Credit Rules, 2004 is of limited application, and only in the restricted context of credit having been properly availed on eligible 'input'/'input service' in accordance with rule 3 of CENVAT Credit Rules, 2004 but, thereafter, rendered ineligible by subsequent use in manufacture of 'exempted goods'/'exempted service' and warranting reversal on attributable, or deemed, proportion as per rule 6(1), 6(2), 6(3) of CENVAT Credit Rules, 2004 failing which the jurisdictional authority was empowered to invoke rule 14 of CENVAT Credit Rules, 2004. The existence of rule 6(5) of CENVAT Credit Rules, 2004, or otherwise, is not germane to entitlement to avail as the lack of specific facilitation after 1st April 2011 merely mandates that the 17 listed 'taxable services' would also be required to be allocated towards 'output service' and 'exempted service' in accordance with rule 6(3) of CENVAT Credit Rules, 2004 if the deployment has not been segregated at the time of usage. The notice does not invoke failure to do so which alone may, in such circumstances, warrant recourse to rule 14 of CENVAT Credit Rules, 2004.

5. On credit of ₹ 57,38,354 denied for lack of nexus, the bland finding of

> *'4.11 Regarding the other services on which cenvat credit has been availed it is seen that they are essentially for the purpose of maintenance of elevators, repair of matrix printers partition/renovation in office, pending works, reimbursement of courier charges. The services are not directly concerned with provision of output services produced by the assessee nor will they fall under the input services covered in Rule 6(5) of Cenvat Credit Rules 2004. Hence the contention is in the Show Cause Notice to the effect that input tax credit amounting to Rs. 57, 38, 354 was availed improperly and merits reversal sustain.'*

is not responsible disposal of allegation in show cause notice through adjudication order and, certainly, warrants appropriate handling.

6. Doubtlessly, rule 3 of CENVAT Credit Rules 2004 is devoid of any time limit for availment of credit. There is also, no doubt, that credit availed, and unutilised, continues in the account for all time to come. Eligibility for credit of tax, included in the invoices raised by M/s Tata Sons Ltd on the appellant, is not in dispute. It also does not require to be stated that it is only with the advent of Point of Taxation Rules, 2011 that significance was attached to time for eligibility to take credit and that, prior to its notification, service was deemed to have been rendered only upon payment. The case laws cited by both

sides were not examined by the adjudicating authority for relevance in the facts of the dispute impugned before us. Neither is there any exposition of the circumstances of the cases relied upon in the impugned order that would justify fitment to the dispute to be resolved by the Tribunal. Surprisingly, too, the assessee has also merely cited legal precedent without offering any justification for the delay in availing credit that, notwithstanding the position in law, devolves upon the assessee.

7. In the absence of justification for rendering a finding of liability that does not take into account provisions of law or judicial determination, we are unable to come to conclusion on upholding of the impugned order, rejection thereof or any modifications therein.

8. To enable disposal of the show cause notice in a manner that could be subjected to the test of law, as enacted and judiciary determined, we set aside the impugned order and remanded the matter back to the original authority for a fresh disposal ensuring that the principles of natural justice are adhered to.

(Order pronounced in the open court on 23/02/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*