

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Excise Appeal No. 85349 of 2020

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/121/19-20 dated 18.11.2019 passed by the Commissioner of Central Excise, Customs & GST (Appeals), Nagpur)

M/s. Ambuja Cements Ltd.

Appellant

(Unit: MCW), Post – Upperwahi,
Taluka – Korpana, Dist. Chandrapur,
Maharashtra 442 908.

Vs.

Commissioner of Customs, Central Excise & GST, Nagpur

Respondent

P.O. Box 81, Telangkhedi Road,
Civil Lines, Nagpur 440 001.

Appearance:

Shri Rajesh Ostwal, Advocate with Ms. Manisha Jatania, Chartered Accountant, for the Appellant

Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 13.01.2023

Date of Decision: 13.01.2023

FINAL ORDER NO. 85393/2023

This appeal is directed against the order in appeal No NGP/EXCUS/000/APPL/121/19-20 dated 18.11.2019 of the Commissioner of Customs, Central Excise and Service tax (Appeals), Nagpur. By the impugned order, following has been held:

"90.1 The Order-in-Original No.05/CX/R-CHD/2019 dated 28-03-2019 passed by the Superintendent, CGST & Central Excise, Range-Chandrapur is upheld and appeal filed by the appellant is disallowed."

1.2 Original Authority has by his order in original held as follows:

8.1 I hereby disallow CENVAT Credit of Rs 6,90,071/- (Six Lakhs Ninety Thousand seventy One only) proposed under the subject statement cum Notice and order to recover the same from the noticee under Rule 14 of the

erstwhile Cenvat Credit rules, 2004, read with Section 11A of Central Excise act, 1944 and Section 174 of the Central Goods and Service Tax Act, 2017.

8.2 I impose a penalty of Rs 69,007/- (Sixty Nine Thousand Seven Only) on the Noticee under rule 15 (1) of the erstwhile CENVAT Credit Rules, 2004 read with section 76 (1) of the Finance Act, 1994 and Section 174 of the Central Goods and Service Tax Act, 2017.

8.3 I impose a penalty of Rs 5000/- under Rule 15 of the erstwhile CENVAT Credit Rules, 2004 for the contravention of its provisions.

8.4 I order recovery of interest at appropriate rate in terms of Rule 14 of the erstwhile CENVAT Credit Rules, 2004 read with Section 11AA/ 11AB of Central Excise Act, 1944 and Section 174 of the Central Goods and Service Tax Act, 2017.”

2.1 Appellant is engaged in manufacture of excisable goods viz. Cement and Clinker falling under chapters 25232930 and 25231000 respectively of the erstwhile Central Excise Tariff Act, 1985. They are availing the benefit of Cenvat Credit Scheme and are availing the Cenvat Credit of

- inputs, Capital Goods used in manufacture of their final product namely Cement.
- service tax paid on various Input Services.

2.2 The Corporate office of M/s. Ambuja cement Limited, (ACL) was registered as a Large Taxpayer Unit having Membership No.LTU/MUM/2212. The Appellant was holding Central Excise Registration No.AAACG0569PXM006. ACL were also holding Input Service Tax Distribution Registration No. XAACGOS69PSTO35 for distributing credit to 17 manufacturing units under Rule 7 of Cenvat Credit Rules, 2004.

2.3 During the course of audit, from the Annual Reports of ACL for the period 2011, 2012, 2013 and 2014, it was noticed that they were engaged in 'Trading of Securities'. From ACL's cash Flow Statement it was evident that they purchase and sell current Investments viz., Mutual Funds ('Securities'), reflected in

their Annual Reports under the Schedules for Current Investments and Non Current investments.

2.4 The activity of purchase and sale, i.e., trading, of units of mutual fund schemes and equity shares by ACL is nothing but 'trading of Securities'. Now, as 'goods' include 'Securities' and 'trading of goods' is an exempted service w.e.f. 01.07.2012 as per Section 66D of the Finance Act, 1994, the activity of purchase and sale of units of Mutual Fund Schemes in which ACL is engaged is an exempted service.

2.5 On scrutiny of the records for the period 2011-12 to 2014-15 by the auditors during the course of EA 2000 audit, it was observed that ACL had availed Cenvat credit of Service Tax paid on common input services such as Banking & Other Financial Services, Advertisement, Computer Networking, Auditing fee, Legal fee, Technical Consultancy fee, Share Registry fee, Courier Service, Insurance Service, 'Business Auxiliary Service, Renting of Immovable Property Service, etc. and distributed to their manufacturing units, both manufacturer of dutiable goods and exempted goods/services including 'trading of Securities' (the service which is exempted with effect from 01.07.2012 as per Section 66D of the Finance Act, 1994). ACL had not maintained any separate account for receipt and use of input services used for manufacture of dutiable goods/services and for exempted goods/services i.e. 'trading of Securities'. ACL had also not exercised any option to reverse Cenvat credit as determined under Rule 6(3A) of the Rules, 2004. Hence, it appeared that ACL had distributed the credit without deducting the amount of credit attributable to the exempted services as required under Rule 6(3)(ii) of the Cenvat Credit Rules, 2004, for the period from 2011, 2012, 2013 and 2014. Under the self-assessment procedure, the onus is on ACL to take Cenvat credit of Service Tax paid only on those services that are eligible for Cenvat credit as per the provisions of the Rules, 2004. Further, as per Rule 9(6) of the Rules, 2004, the burden of proof regarding the admissibility of Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit.

2.6 A show cause notice dated 25.11.2016 amounting to Rs.91,21,237/- for the period 2011 to 2014 was issued to ACL

by the Joint commissioner, LTU (Audit) asking them to show cause as to why:

- (i) the amount of Input Service credit of Rs.91,21,237/- being wrongly availed by them during the year from 2011, 2012, 2013 and 2014 should not be demanded and recovered from them under Rule 14 of the Rules, 2004 read with Sec. 11A(4) of the Central Excise Act, 1944 and /or Section 73 of Finance Act, 1994;
- (ii) Appropriate interest payable on the amount demanded under Sl. No. (i) above should not be recovered from them under Rule 14 of the Rules, 2004 read with Section 11AB / 11AA of the Central Excise Act, 1944 and/ or Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed on them under Rule 15(3) of the Rules, 2004 read with Section 11AC of Central Excise Act, 1944 and / or Section 78 of the Finance Act, 1994 for suppressing the facts of actual Cenvat credit availed and utilized which has resulted in wrong availment and utilization of Cenvat credit resulting in short payment of correct Service Tax.
- (iv) Penalty should not be imposed on them under Rule 15A of Rules, 2004 for contravention of the provisions of these rules for which no penalty has been provided in the rules;
- (v) Penalty should not be imposed on them under Section 15A Central Excise Act, 1944 for failure to pay Service Tax within the prescribed time as required under Section 78 of Finance Act, 1994 and Rule 7 of Rules, 2004, in view of wrongly taken and distribution of Cenvat Credit for payment of Central Excise duty, which was not available otherwise;

2.7 Subsequently periodical show cause notice were issued to the ACL by the concerned officers in LTU, Mumbai. Vide Board Circular No 1056/05/2017-CX dated 29.06.2017, LTU's were wound up and the legacy work was directed to be handled by the jurisdictional officers having jurisdiction over the factory of manufacture.

2.8 Statement-cum-Notice dated 30.10.2018, for the period from January 2017 to June 2017 was therefore, issued to the

Appellant by the Superintendent, CGST & Central Excise, Range Chandrapur, proposing to

- Disallow CENVAT Credit of Rs. 6,90,071/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and Section 174 of the Central Goods and Service Tax Act, 2017.
- Demand interest at appropriate rate on the credit so disallowed in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and Section 174 of the Central Goods and Service Tax Act, 2017.
- Impose penalty under Rule 15 (1) of the Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and Section 174 of the Central Goods and Service Tax Act, 2017

2.9 The Statement cum Notice was adjudicated as per order referred in para 1.2 above. Being aggrieved Appellants are filed Appeal, to the Commissioner (Appeals) which was dismissed as per impugned order referred in para 1, above.

2.10 Aggrieved appellants have filed this appeal.

3.1 I have heard Shri Rajesh Ostwal, Advocate with Ms. Manisha Jatania, Chartered Accountant for the Appellant and Shri P K Acharya, Superintendent, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that-

- The subscription and redemption of the liquid mutual fund units cannot be termed as 'trading in securities' and hence, do not qualify as 'exempted services'. Therefore, Rule 6 of the Cenvat Credit Rules, 2004 is not applicable in the present case.
- As per the definition of terms 'sale', 'purchase', 'trading', 'redemption' and 'subscription', as per the various dictionary meanings and as understood in common parlance, the activity of redemption and subscription of the mutual funds by the appellant is different from sale and purchase of securities/ trading in securities.
- Issue is squarely covered in their favour by the decisions as follows:

- ACE Creative Learning Pvt Ltd [2021 (51) GSTL 393 (T)]
 - Tata Sons Ltd. [2022 (11) TMI 325 –CESTAT-Mumbai]
 - Space Matrix Design Consultants Pvt Ltd. [2019 (4) TMI 1599 CESTAT Bangalore]
 - Shriram Life Insurance Company [2019 (2) TMI 688 – CESTAT Hyderabad]
- The activity of investment in mutual fund units is not a service per-se as per Education Guide para 2.6.6 and 2.6.9, therefore, would not qualify as "exempted service". Reliance is placed on the decisions in the cases of:
- Orion Appliances Ltd [2010 (19) STR 205 (T)]
 - Gulf Oil Corpn Ltd. [2014 (33) STR 298 (T)]
 - Elder Pharmaceuticals Ltd. [2014-TIOL-271-CESTAT-Mum]
- The activity of investment in mutual funds is integral to the primary business of the appellants. Hence, the investment activity cannot be treated as 'trading' for the purpose of reversal under Rule 6 of the Cenvat Credit Rules, 2004.
- Without prejudice to any of the above submissions, the department has failed to classify which input services were used commonly for both taxable and exempt services by the appellants, as have been held Space Matrix Design Consultants Pvt. Ltd. [2019 (4) TMI 1599 CESTAT Bangalore]
- The contention in the OIO and impugned Order that the so called trading in securities is not an input service, is clearly a non-application of mind.
- Since demand cannot be sustained on merits, no interest chargeable or penalty imposable.

3.3 Learned Authorized reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner (Appeals) has recorded following findings while upholding the order referred in para 1.2 above.

"89.1 The issues which needs to be decided in the instant case are -

(i) whether the exempted service viz. 'Trading of Security' Service qualify as an input service under Rule 2(1) of the Cenvat Credit Rules, 2004 or not. Accordingly, whether the Appellant is eligible to Cenvat credit of Service Tax paid in respect of the same under the erstwhile Rules, 2004 or not.

(ii) whether the Appellant is liable for payment of interest and which penalties are to be imposed.

89.2. I proceed to decide the issues as under:

89.3 The Appellant has been registered with the Department for manufacture of 'Clinker' and 'Cement'. The Appellant has classified these items as 'input service' as per Rule 2(1) of the Rules, 2004 and have availed Cenvat credit in respect of the same, which is sought to be disallowed by the Department.

89.4 The definition of 'input service', under Rule 2(1) of the Cenvat Credit Rules, 2004, as it stood during the material period covered under the subject Statement cum Notice, is re-produced below:

'input service' means any service,

(i) used by a provider of [output service] for providing an output service, or (ii) used by the manufacturer whether direct or indirect in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes, services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

but excludes,-

[A] service portion in the execution of a work contract and construction services including services listed under clause (b) of

section 66E of the Finance Act (here in after referred as specified services) in so far as they are used for-

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
- (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]*

[(B) [services provided by way of renting of motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods;

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by-

- (a) manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or*

(A) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]
(Explanation- For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

89.4.1 From the above definition of 'input service', it is seen that the expression "used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products" postulates the services relating to activities which are having direct nexus or are integrally connected with the business of manufacturing of final product.

89.4.2 Accordingly, the services, which have nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product, only would qualify to be 'input service' under Rule 2(1) of 2004 Rules.

89.4.3 The above definition, read as a whole, makes it clear that the said definition does not cover services, which do not have

direct nexus or which are not integrally connected with the business of manufacturing of the final product.

89.4.4 It is further seen that the Noticee has quoted various case laws in their written submissions, as highlighted above.

89.4.5 I find that, in the case of ROCA BATHROOM PRODUCTS PVT. LTD. Vs. COMMISSIONER OF C. EX., JAIPUR-I [2017 (51) S.T.R. 432(Tri.- Del.)], the Hon'ble Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi, held as under:

"Cenvat credit Input services Distribution by ISD - Trading activity - Credit distributed by head office on various input services as ISD not used in Manufacturing activity but in trading of goods Submission of appellant that input services used exclusively in manufacturing activity not supported by any evidence of nexus between input services and manufacturing activity, rather their nexus with trading established - In view of clear statutory provisions that credit available only if inputs / input service used directly or indirectly in relation to manufacture and clearance of final product, invoices of ISD cannot distribute credit of Service Tax in respect of trading activity Credit not admissible - Rules 2(1) and 7 of Cenvat Credit Rules, 2004. [paras 4, 4.2]"

89.5 Without prejudice to the above, it is further seen that Section 66D of the erstwhile Finance Act, 1994 (as amended) w.e.f. 01-07-2012, which comprised the Negative list of various services which were listed thereunder including the subject services, namely '(e) trading of good'. It is thus, seen that the subject services, in respect of which, the Appellant sought to avail Cenvat Credit, are exempted services.

89.6 In view of the above discussion and findings, it is seen that, in the facts of the present case, use of the services, relating to Trading of Security' which is also 'Trading of Goods', has no nexus or integral connection with the business of manufacturing of Appellant's final product namely, 'Cement'. As such, it would be reasonable to conclude that 'Trading of Security' service would not qualify to be an 'input service' under Rule 2(1) of the Rules, 2004. 9.6.1 Therefore, I hold that the Appellant are not entitled to avail CENVAT Credit of service tax paid in respect of

'Trading of Security' service', in terms of Explanation 2 to sub-Rule 3 of Rule 6 of the Rules, 2004."

4.3 Section 65B (25) of the Finance Act, 2012 defines "goods" as under:

"(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

The term "goods" therefore includes "securities" under its purview for the purpose of service tax.

Para 2.6.6 of the Revised Education Guide clarifies as follows:

"2.6.6 "Securities" have been included as goods. What are securities?

Securities have been defined in section 65B of the Act as having the same meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 Of 1956) in terms of which 'securities' includes-

Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

Units or any other such instrument issued to the investors under any mutual fund scheme."

Para 2.6.9 of the Revised Education Guide reads as under:

"2.6.9 Would buying or selling of mutual funds or debentures be a 'service'?"

No, buying or selling of mutual funds or debentures would not be a service as the same would be a transaction in securities.

The activity of making investment in the mutual fund units does not qualify as service per se under Section 65 B (44) of the Finance Act, 1994. Rule 2(e) of the Cenvat Credit Rules, 2004 which defines 'exempted service' reads as under:

"2 (e) (1) taxable service which is exempt from the whole of service tax leviable thereon."

The conclusion arrived by me is supported by the following decisions:

i. Orion Appliances Ltd [2010 (19) STR 205 (T)]

"4. The issues to be decided in this case are :

(i) Whether trading activity can be called a service.

- (ii)
- (iii)

5. *As regards the issue as to whether trading activity can be called a service, it is quite clear that since trading activity is nothing but purchase and sales and is covered under sales tax law, it may not be appropriate to call it a service. Therefore it has to be held that trading activity cannot be called a service and therefore it cannot be considered as an exempted service also."*

ii. Gulf Oil Corpn. Ltd. [2014 (33) STR 298 (T)]

"3. *I agree with the finding of the Commissioner (Appeals) as the input service definition as contained in Rule 2(l) of Cenvat Credit Rules is for use by a provider of a taxable service or for use by a manufacturer or in relation to manufacture of final product. In this particular case, the registered dealer is neither a manufacturer nor a provider of taxable service. Therefore, he will not come under definition and cannot avail the credit of Service Tax paid on transportation of the goods. This Bench has decided the issue in the case of Orion Appliances Ltd. v. CST, Ahmedabad - 2010 (19) S.T.R. 205 (Tri-Ahmd.), that trading activities can be called a service or not. It was held that it may not be appropriate to call it as a service because the trading activity is nothing but purchase and sale and is covered under the sales tax law. It was, therefore, held that the trading activities cannot be considered as a service and cannot be considered as a exempted service. Following this judgment along with other legal interpretations, I find that there is no force in the arguments of the appellant."*

4.4 The dictionary meaning of the terms 'sale', 'purchase', 'trading', 'redemption' and 'subscription', as understood in common parlance, is as under:

PURCHASE		
The Penguin International Dictionary of FINANCE 3 rd edition		Acquisitions of ownership of an instrument; or bond through payment of its face value with either a discount or a premium.

Wharton's Law Lexicon; 15th edition	Means any transfer of property in goods to the person making the purchase for cash or deferred payment or other valuable consideration but does not include a transfer by way of mortgage, hypothecation, charge or pledge.
K.J Aiyer's Judicial Dictionary; 13 th edition	"The word 'Purchase' means buying for a price or equivalent of price (by payment in kind or adjustment towards an old debt or for other monetary consideration). The ingredients of the definition of 'purchase' are as follows: i. There shall be acquisition of goods; ii. The acquisition shall be for cash or deferred payment or other valuable consideration; and iii. The said valuable consideration shall be other than under a mortgage, hypothecation, charge, or pledge.
SALE	
The Penguin International Dictionary of FINANCE; 3 rd Edition	<i>Cession of ownership of an instrument or bond against payment of its face value with either a discount or a premium.</i>
Collins dictionary of Business	<i>"The purchase of good or service by a buyer from a seller at a stated price or in some instances, through Barter or Countertrade arrangement.</i>
The Concise Commercial Dictionary, First Indian Reprint 1997	<i>"A transfer of the whole right of property in a thing in consideration of a sum of money."</i>

Wharton's Lexicon; edition	Law 15 th	<i>"In order to constitute a sale there must be an agreement for sale of goods for a price and the passing of property therein pursuant to such an agreement, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale.</i> <i>On the other hand to constitute a "purchase of goods" within this Entry, there must be an agreement for purchase of goods and the passing of property therein pursuant to such an agreement.</i>
TRADE		
Cambridge International Dictionary of English	of	The activity of buying and selling, or exchanging, goods and/or services between people or countries.
The Penguin International Dictionary of FINANCE; Edition	of 3 rd	To buy and sell, e.g. negotiable instruments, commodities, currencies, of the commodity markets, business in a particular commodity.
Collins dictionary of Business		The exchange of goods, services and financial securities between buyers and sellers. In most cases trade takes place using Money as a means of exchange in buying and selling transactions, though occasionally trade can involve direct BARTER.

Black's Dictionary; Edition	Law 8 th	The business of buying and selling, esp.of commodities and securities. i. Day trading. The act or practice of buying and selling stock shares or other securities on the same day, esp. over the Internet, usu. For the purpose of making a quick profit on the difference between the buying and the selling price. ii. Secondary trading. The buying and selling of securities in the market between members of the public, involving neither the issuer nor the underwriter of the securities. iii. Short-term trading. Investment in securities only to hold them long enough to profit from market-price fluctuations.
TRADING		
Cambridge International Dictionary English	of	"Trading is also the buying and selling of shares and money: The stock market moved ahead slightly active trading today.' "Trading is an exchange or sale of goods, whereas manufacture is the making of goods by a technical or industrial process.
REDEMPTION		
Webster's Dictionary English	of	Redemption 1. The action of redeeming or the state of being redeemed."
SUBSCRIPTION		
Webster's Dictionary English	of	"The action or fact of subscribing.* An arrangement by which access is granted to an online service * A payment to subscribe to something. 2. formal a signature or short piece of writing at the end of a document *

	archaic a signed declaration or agreement.
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4.5 From the definitions as above, I am convinced that following are the ingredients of trading:

- i. There should be two parties and a market to purchase and sell the good involved;
- ii. There should be transfer of right/title involved from the seller to the buyer, while selling the same;
- iii. There should be a fixed price known in advance while selling or buying the said good etc.

If we test the activities undertaken by the appellant, against the above criteria the activity of subscription and redemption of the units of the mutual fund is not an activity of sale and purchase of the securities. When the units of mutual fund are redeemed, the units cease to exist i.e., gets cancelled or relinquished, It does not get transferred to the third party. Thus investment activities undertaken by the appellants is totally different from 'trading in securities'.

4.6 The issue has been considered by the tribunal in the decisions referred below and following has been held:

ACE Creative Learning Pvt. Ltd. [2021 (51) GSTL 393 (T)]:

"5. There is a restriction on the right to transfer unit and the appellant cannot transfer units to any other person. Further I find that the appellant cannot be termed as "service provider" because he only makes an investment in the mutual fund and earn profit from it which is shown in the Books of Accounts under the head "other income". Hence the question of invoking Rule 6 does not arise, and I am of the view that Department has wrongly invoked the provisions of Rule 6(3) demanding the reversal of credit on the exempted services."

Tata Sons Ltd. [2022 (11) TMI 325 - CESTAT Mumbai]:

"4.8 In our view the appellants do not actually trade in securities but are only managing their investments in the group companies by withdrawing the investment made in one company and subsequently investing in other. Such management of investment by the appellant cannot be termed as trading because the appellants do not buy and sell the stocks of any and every company. Also the management of investment as

submitted by the appellants is on the basis of need and not with the sole motive of profit."

**Space Matrix Design Consultants Pvt. Ltd. Bangalore,
[2019 (4) TMI 1599 – CESTAT]**

"5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants are not in the business of buying and selling of Mutual Fund securities rather the appellant has made investment in Mutual Funds in financial years 2016-17 in order to utilize the surplus fund that may accrue from time to time with an intention to manage the company's liquidity and mitigating its operational and financial risk. The said investments are only redeemed when there is necessity of funds and the same is utilized for the operational need of the company. Further I find that the appellant is not engaged in the business of trading in securities (Mutual Funds) but the investment in Mutual Fund is an investment activity and gain from return of Mutual Fund is taxed as capital gain and not as business income."

**Shriram Life Insurance Company Ltd. [2019 (2) TMI 688 -
CESTAT Hyderabad]**

"11. In view of the above, we are of the view that the investment activity undertaken by the appellant assessee is an integral part of life insurance service and cannot be divested from the same. As the service being rendered by the appellant is that of life insurance, which is a taxable service, it cannot be said that appellant is rendering any exempted service. In our view, even otherwise Rule 6 of CENVAT Credit Rules 2004, applies in a case where credit on inputs and input services i.e. common to rendition on taxable and exempted services has been availed of, in the instant case the only service that the appellant is rendering is life insurance service, which is taxable entirely. Thus, it cannot be said that appellant has availed any credit on input and input services which is common or attributable to rendition of any exempted services. Even otherwise, since tax was paid on the entire premium recovered towards the service of managing investment in approved securities, appellant cannot be said to be rendering any exempted services."

13...In the case in hand, as the activity of managing investments suffers service tax liability under life insurance services, the same cannot be said to be an exempted service, warranting reversal of CENVAT Credit under Rule 6 of CENVAT Credit Rules 2004."

4.7 From the above since I find that the activity of redemption and subscription of mutual fund is akin to management of investments and not trading in services, it cannot be held as exempted service, for seeking the reversal as per provisions of Rule 6 of CENVAT Credit Rules, 2004. In the impugned order, reliance has been placed on the decision in the case of Roca Bathroom Products Pvt. Ltd. [2017 (51) S.T.R. 432(Tri.- Del.)]. The said decision is distinguishable as it is in respect of the trading of goods and not in the case where the Education Guide itself clarifies that buying and selling of the unit of mutual funds is not service itself.

4.8 In view of the discussion as above I do not find merits in the demand made by the impugned order. As the order fails on the merit of demand, the same will fail on the demand of interest and penalty imposed.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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