CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 87788 of 2014

(Arising out of Order-in-Original No. 79/SK/MI/2013-14 dated 30.03.2014 passed by the Commissioner of Central Excise, Mumbai-I)

M/s. VVF (India) Ltd. **Appellant**
109, Near Sion Fort,
Sion (E), Mumbai 400 022.

Vs.

Commissioner of Central Excise, Mumbai-I **Respondent**
115, New Central Excise Building,
Maharshi Karve Road, Churchgate,
Mumbai 400 020.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Amrendra Kumar Jha, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 06.10.2023
Date of Decision: 08.11.2023

FINAL ORDER NO. 87106/2023

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is manufacture of excisable goods such as refined glycerin and different grades of fatty acids. They are paying central excise duty on the goods manufactured. They have also availed facilities of cenvat credit under Cenvat Credit Rules, 2004. Head office of the appellant is engaged in trading of certain oils. It was observed by Revenue that the appellant has availed cenvat credit on certain common input services such as security service, commission, transport of goods by road, cleaning services etc. which were used by them for trading and manufacturing activities. Therefore, it appeared to Revenue that for the year 2011-12 and 2012-13, trading being exempted service, appellant was required to pay an amount of Rs.51,45,637/- under Rule 6(3)(i) of Cenvat Credit Rules, 2004. Therefore, a show cause notice dated 29.11.2013 was issued to the appellant, wherein the appellant was called upon to show cause as to why inadmissible cenvat credit availed by the appellant amounting to Rs.51,45,637/- should not be recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004. Appellant contested the show cause notice by stating that trading was not a part of the manufacturing activity and the same was carried out independently at the head office and the credit attributable to trading activity was not availed and, therefore, the question of payment of said amount did not arise. However, the said argument was not appreciated by the original authority who adjudicated the said show cause notice through the impugned order-in-original. Learned original authority has confirmed the demand of cenvat credit availed on the input service credit of Rs.51,45,637/- and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

2. Learned counsel for the appellant has submitted that the appellant has not availed credit of input services relating to trading activities. He has further submitted that Rule 6 of Cenvat Credit Rules provides three options to the assesse for taking credit on input service used for exempted goods or exempted services and under such circumstances, Revenue cannot compel the appellant to choose only one option. Appellant has placed reliance on ruling by Hon'ble Telangana High Court in the case of Tiara Advertising vs. UOI reported at 2019 (30) GSTL 474 (Telangana). He has further submitted that in para 14 of the said ruling, Hon'ble Telangana High Court has held that if an output service provider does not exercise one of the options provided under the said Rule 6, then the provisions of the rule do not contemplate Revenue to choose one of the options on behalf of the service provider. He has submitted that Revenue has not pointed out in the subject show cause notice the quantum of credit availed by the appellant on common input services. He has also submitted that one of the options given under the said Rule 6 is that the assesse can reverse cenvat credit attributable to exempted service. He has submitted that even now they are ready to pay attributable cenvat credit out of

cenvat credit availed on common input services which has gone into the exempted service trading.

3. Heard the learned AR for Revenue. Learned AR has submitted that the appellant's registered office was distributing input credit through ISD invoices to their various manufacturing units during the material period. He has submitted that it was the responsibility of the appellant as ISD and the manufacturing unit is the same legal person and it is a fact that appellant had taken credit of service tax paid in respect of opening of LC opened for trading activity in their ISD account.

4. We have carefully gone through the record of the case and submissions made. We note that the show cause notice initially states that Rs.51,45,637/- is an amount recoverable under Rule 6(3)(i) of Cenvat Credit Rules, 2004 but when it comes to para 7 of the same show cause notice, Revenue calls upon the appellant to show cause as to why inadmissible cenvat credit availed by the appellant amounting to Rs.51,45,637/- should not be recovered. Further, the original authority has passed the order confirming the demand of cenvat credit availed of the input service credit of Rs.51,45,637/-. It is to be noted here that there was a discrepancy in the show cause notice. Initially the said amount was called as an amount recoverable and subsequently the same amount was called as inadmissible cenvat credit availed. The fact is that the show cause notice does not establish that inadmissible cenvat credit of Rs.51,45,637/- was ever availed. We also note that what was the quantum of service tax availed by the appellant during the material period out of the service tax paid on common input services has not been specified in the show cause notice nor it comes out of the order-in-original. We have also perused the ruling by Hon'ble Telangana High Court in the case of Tiara Advertising relied upon by the appellant. We note that Hon'ble Telangana High Court has held that it is not Revenue which will choose the option to be exercised by the assesse out of the various options provided under Rule 6 of Cenvat Credit Rules, 2004. We also note that the appellant has undertaken to reverse cenvat credit attributable to the credit that has gone into

trading. We are, therefore, of the view that the matter needs to be remanded to the original authority with the direction to recover that quantum of cenvat credit which is part of the cenvat credit availed on common input services and which is attributable to exempted activity of trading. For this purpose, we set aside the impugned order and allow the appeal by way of remand. Appellant is directed to co-operate with Revenue and provide with all the data necessary for passing such an order.

5. In above terms, the appeal is allowed by way of remand.

(Order pronounced in the open court on 08.11.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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