CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88694 OF 2013

[Arising out of Order-in-Original No: PUN-EXCUS-001-COM-013-13-14 dated 5th August 2013 passed by the Commissioner of Central Excise, Pune – I.]

Atlas Copco (India) Ltd
Sveanagar, Mumbai-Pune Road, Dapodi
Pune - 411012 … ***Appellant***

versus

Commissioner of Central Excise
Pune – I
41-A ICE House, Sassoon Road, Pune - 411001 ***…Respondent***

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri Bhilegaonkar Deepak, Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87236/2023

DATE OF HEARING: 30/06/2023
DATE OF DECISION: 13/12/2023

PER: C J MATHEW

This appeal of M/s Atlas Copco (India) Ltd arises against order[1]

[1] [order-in-original no. PUN-EXCUS-001-COM-013-13-14 dated 5th August 2013]

of Commissioner of Central Excise, Pune – I which confirmed demand of ₹ 18,03,72,274/- under rule 14 of CENVAT Credit Rules, 2004, along with interest as applicable, and imposed penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 even while dropping the demand for recovery of ₹ 19,53,96,311/-.

2. The appellant had been manufacturing goods and also undertake trading in goods and the dispute pertains to the credit availed on 'input service' alleged to have been deployed in common that was attributable to the latter. The primary objection of central excise authorities appears to have been that the pro-rata adjustment, undertaken by the appellant, is not in conformity with rule 6 of CENVAT Credit Rules, 2004 and that the adjustment for reversal done on annual basis should, in fact, have been undertaken every month. According to Learned Counsel for the appellant, the discretion for exercising any of the options rested entirely with the assessee for which reliance was placed on the decision of the Tribunal in *Star Agriwarehousing & Collateral Management Ltd v. Commissioner of Central Excise & Service Tax, Jaipur [2021 (44) GSTL 271 (Tri.-Del.)]*, in *Alstom T&D India Ltd v. Commissioner of GST & Central Excise, Chennai [2019 (370) ELT 625 (Tri.-Chennai)]*, in *Welspun Corp Ltd v. Commissioner of Central Excise, Kutch [2019 (368) ELT 179 (Tri.-Ahmd.)]* and in *Reliance Media World Ltd v. Commissioner of Service Tax, Mumbai – II [2017 (4)*

GSTL 369 (Tri.-Mumbai)].

3. According to Learned Authorised Representative, the finding of the original authority in relation to the demand, for the period from April 2011 to March 2012, was elaborate enough to find acceptance; he contended that the definition of 'exempt service' in rule 2(e) of CENVAT Credit Rules, 2004 is abundantly clear as is rule 6 thereof and consequently the decision of the Hon'ble Supreme Court in *Mangalore Chemicals & Fertilizers Ltd v. Deputy Commissioner [1991 (55) ELT 437 (SC)]*, holding that

> *'12. Shri Narasimhamurthy against relied on certain observations in Collector of Central Excise, Bombay-I & Anr. v. Mis. Parle Exports (P) Ltd. [1989 (1) SCC 345 = 1988 (38) ELT 741 (SC)], in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax-payers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed :*
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> > *"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."*
>
> *The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the*

need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors. [1991 JT (1) 151 at 155]:

> *".....Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction…" (Emphasis supplied)'*

leaves no space warranting interpretation of any kind.

4. Reliance was also placed on the decision of the Hon'ble High Court of Delhi in *Malaysian Airlines v. Union of India [2010 (262) ELT 192 (Bom.)]* and of the Hon'ble Supreme Court in *Gujarat Travancore Agency v. Commissioner of Income Tax [1989 (42) ELT 350 (SC)]* as well as in *Union of India v. Dharmendra Textile Processors [2008-TIOL-192-SC-CX-LB]*.

5. We find that the issue in question is limited to the extent to which the appellant was in conformity with the prescription in rule 6(3) of CENVAT Credit Rules, 2004 pertaining to consequence of non-maintenance of separate records. The appellant contends that they were in conformity with rule 6(2) of CENVAT Credit Rules, 2004 inasmuch as they had segregated the utilization of common

'input services' between excisable goods and exempted services. We find that the Tribunal, in *re Star Agriwarehousing & Collateral Management Ltd,* has held that

> *'8. We have heard the rival contentions and are of the view that it is a matter of record that the appellant have been providing both taxable and exempted output services in respect of which they have been availing credit of common input services. It is also a matter of record that the appellant have fulfilled the requirement of Rule 6(3)(ii) of the Cenvat Credit Rules, 2004 read with Rule 6(3A) and have been reversing the amount of common Cenvat credits, proportionate to value of exempted output services. In this regard we take note of the fact that appellant have furnished Cenvat credit register for the period April, 2009 to June, 2012 which indicate that they have regularly been reversing the proportionate amount of the Cenvat credit taken on the common inputs which have gone into exempted output services. In this regard, we are of the view once the appropriate reversal have been made under Rule 6(3A) of the Cenvat Credit Rules any procedural violations of minor nature would be of in-consequential nature and will not disentitle the assessee from availing the Cenvat credit of the common inputs for which they have already been making a regular reversal of proportionate credits. We also take note of the fact that the Department has nowhere mentioned in entire proceedings that the amount of Cenvat credit reversed is not proportionate to the value of exempted services or not proper otherwise. The only ground that the appellant have not followed the laid down procedure of availing the option of Rule 6(3A) like not declaring value of turnover of exempted services in their periodic service tax return, etc., can be*

minor procedural lapses, but same cannot become ground for denying a substantial benefit to the appellant.

9. We are also of the view that once the proportionate reversal of the Cenvat credit has taken place, that tantamount to not availing of the input services credit of the common inputs which are going into the exempted services. While holding this view we take shelter of the decision of the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. v. Collector of Central Excise, Nagpur - 1996 (81) E.L.T. 3 (S.C.).

10. We also take note of this Tribunal's decision on the same issue in case of M/s. The Oberoi Rajvilas v. Commissioner of Central Excise, Jaipur reported under 2018 (5) TMI 1715 - CESTAT New Delhi, the relevant extract of same are reproduced here below :-

> *"9. From the above, we note that the appellant has followed the proportionate method for availment of credit on common input services. It cannot be said that the appellant has availed any credit on input services used in providing exempted service. The reversal of credit as above satisfies the requirement of non-availment of credit laid down in the Notification No. 1/2006-S.T. ibid.*
>
> *10. It is a settled position of law that proportionate reversal at a later date will satisfy the requirement of non-availment of Cenvat credit. This view is supported by various decisions of the Supreme Court/High Courts and Tribunal, some of which have been cited by the appellant.*
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> *11. The procedure prescribed in Rule 6(3A) of the [Cenvat] Credit Rules is only to make the provisions of Rule 3 workable. By means of proportionate reversal the requirement of Rule 6(3) has been substantially satisfied. This is also provided in Rule 6(3D) of the Cenvat Credit Rules which was introduced at a later date".'*

6. Likewise, in *re Welspun Corp Ltd*, it was held that

'7. In view of the above, the issue is no longer res integra, therefore, the demand confirmed equal to 5%/10% of value of

the exempted goods is not sustainable. As regard the submission of Ld. Counsel regarding the limitation, we find that firstly, the appellant had not utilized the Cenvat credit attributed to the exempted goods, secondly the fact regarding the availment of credit and manufacture and clearance of exempted and non-excisable goods are very much on record, therefore, the suppression of fact cannot be attributed on the part of the appellant. We also find that since the issue regarding reversal of Cenvat credit under Rule 6(3) is contentious and various cases on the same issue have been made out which can be seen from such of judgment given above, therefore, on the issue related to Rule 6(3) particularly in the facts of the present case it cannot be said that the appellant had mala fide intention to evade payment of duty. Therefore, demand for the extended period is also hit by limitation for the same reason the penalties imposed are also unsustainable.'

7. In *re Reliance Media World Ltd*, it has been held

'7. It is appropriate that we look at the provisions of the Cenvat Credit Rules, 2004 in the context of its intent. Doubtlessly, every provider of output service or manufacturer is entitled to avail and take credit of duty/tax included in the consideration for inputs/input services so that the cascading effects of taxation are not burdened on the intermediate levels in the channel leading from manufacturer/service provider to the ultimate recipient. In order that administrative complications did not hinder this objective, the rules provide that where separate sets of accounts are not maintained, tax liability of up to 20% alone can be discharged by recourse to accumulated Cenvat credit. That the appellant has not restricted the utilisation of Cenvat credit to the stipulated limit is not in dispute; neither is it in dispute that appellant

has been providing services throughout India including the State of Jammu and Kashmir, that inputs/input services have been made use of for rendering your service without distinction of the territory in which the service is rendered and that separate accounts of inputs/input services are not maintained.

8. As the Finance Act, 1994 does not extend to State of Jammu and Kashmir, output services provided there are not subject to tax. However, in the matter of rendering such service, it is moot whether the provision of services to the excluded territory required additional use of input/input services. Nor is it the case of the tax authorities that the scale of services rendered in the rest of India could have been achieved by isolating a portion of the inputs/input services as attributable to services rendered in the State of Jammu and Kashmir. In such a situation, there is no logic or soundness to hold that the inputs/input services used for rendering 'broadcasting service' should be restricted to such as evidenced to have been used for rendering service in the rest of India. In these circumstances the availment of the Cenvat credit to the full extent cannot be questioned. Its utilisation thereof cannot also be restricted.

9. If the output services were to be distinctly identifiable as one which is exempt (other than territorially) in contradistinction with a taxable service and if the input/input services were distinctly divisible, though not procured separately, the provisions of Rule 6 of Cenvat Credit Rules, 2004 would come into play. As the entire quantum of input services would be required to provide the taxable service, the scope for delineating that pertaining to the exempt service cannot be said to exist. Legislative intent would appear to have been targeted at precluding the utilisation of Cenvat

> *credit that would not be available had the assessee restricted itself to taxable output services.*
>
> *10. In the specific circumstances that we note above, we do not find justification for invoking Rule 6(3) of Cenvat Credit Rules, 2004 to disallow any portion of the availed credit. Consequently, the recovery too fails. We, therefore, allow the appeal and set aside the impugned order. Cross-objection disposed of.'*

8. Considering the decisions above, it would appear that the provisions of rule 6, offering alternatives, are subject to preference on the prioritization of options. The claim of the appellant that they had apportioned input services between excisable goods and exempted service and followed up with reversal of credit to the extent attributable to the latter does not appear to have been examined in the order of the adjudicating authority. To enable that, we set aside the impugned order and remand the matter back to the original authority for a fresh decision after taking note of the submissions of appellant herein.

9. The appeal is accordingly disposed off.

(Order pronounced in the open court on 13/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*