CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85242 of 2018

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-002/17-18 dated 24.10.2017 passed by the Commissioner of Central Excise & Service Tax, Pune-I)

Ajay Jain **.... Appellant**
Plot No A-5, MIDC Area, Ranjangaon,
Shirur, Pune - 412 220

Versus

Commissioner of Central Excise and Service Tax, Pune-I **.... Respondent**
41-A, ICE House, Sasoon Road,
Opp. Wadia College, Pune - 411 001

Excise Appeal No. 85243 of 2018

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-002/17-18 dated 24.10.2017 passed by the Commissioner of Central Excise & Service Tax, Pune-I)

Rajhkumar Jaain **.... Appellant**
Plot No A-5, MIDC Area, Ranjangaon,
Shirur, Pune - 412 220

Versus

Commissioner of Central Excise and Service Tax, Pune-I **.... Respondent**
41-A, ICE House, Sasoon Road,
Opp. Wadia College, Pune - 411 001

Excise Appeal No. 85244 of 2018

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-002/17-18 dated 24.10.2017 passed by the Commissioner of Central Excise & Service Tax, Pune-I)

L.G. Electronics India Pvt Ltd **.... Appellant**
Plot No A-5, MIDC Area, Ranjangaon,
Shirur, Pune - 412 220

Versus

Commissioner of Central Excise and Service Tax, Pune-I **.... Respondent**
41-A, ICE House, Sasoon Road,
Opp. Wadia College, Pune - 411 001

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellants
Shri Rajiv Ranjan, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85616-85618/2024

Date of Hearing: 12.06.2024
Date of Decision: 12.06.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are *inter alia* engaged in the manufacture of electronics goods. The appellants also engage various External Manufacturing Service provider (EMS), who manufacture the said goods specifically for the appellants. Thus, the appellants are also engaged in the activity of trading of goods manufactured by the EMS (exempted operations/exempted services). The appellants as well as the EMS cleared the manufactured goods from their respective locations after payment of central excise duty. The finished goods are then transferred to the Central Depot and thereafter to the regional depot of the appellants based on requirements. During the disputed period, the appellants had availed CENVAT Credit of Service Tax paid on various input services used in their manufacturing operations. On the basis of records maintained by them, the CENVAT Credit attributable to exempted goods (trading activities), was appropriately reversed. Since the appellants were engaged in the manufacture of both dutiable as well as exempted goods (trading), it had reversed the CENVAT Credit in terms of the formula prescribed under Rule 6(3A) of the CENVAT Credit Rules, 2004. Reversal of CENVAT Credit under such statutory provision was not accepted by the Department inasmuch as they had interpreted that for the purpose of computation of the amount to be reversed under the said statutory provisions, the appellants were required to consider the total amount of CENVAT Credit availed on input services during the preceding financial year and not of the CENVAT Credit attributable to common input services. On the basis of such interpretation, the Statement of Demand (SOD) dated 01.08.2017 was issued by the Department, which culminated into the Order-in-Original No. PUN-EXCUS-001-COM-002/17-18 dated 31.10.2017 (for short referred to as the 'impugned order'), wherein the original authority had confirmed CENVAT demand of Rs.2,90,56,658/- along with interest and also imposed equal amount of penalty on the appellant. Besides, the penalty amount of Rs. 1,00,000/- and Rs.50,000/- under Rule 15(1) *ibid* on the other appellants Shri Rajhkumar Jaain, GM-Finance and Taxation, and Shri Ajay Jain, Manager (Commercial & Excise) respectively were also imposed. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and perused the case records.

3. The issue involved in the present appeal relates to determination of the correct formula adopted by the appellant for the purpose of CENVAT Credit in terms of Rule 6(3A) ibid. As per Revenue, the appellants should have considered the total CENVAT Credit availed for the purpose of formula laid down in the said rules. We find that the issue arising out of the present dispute is no more *res integra* in view of the Order No. A/10430-1038/2019 dated 12.03.2019 passed by the co-ordinate Bench of the Tribunal, in the case of *Commissioner of Central Excise & Service Tax, Rajkot Versus M/s. Reliance Industries,* reported in *2019 (3) TMI 784 – CESTAT AHMEDABAD.* The relevant paragraphs in the said order are extracted herein below:-

> *8. From the reading of Rule 6(1), it is clear that only in respect of input or input service used in exempted goods are not allowed. That means input or input service used in taxable service/dutiable goods, CENVAT Credit is allowed. Sub-rule (2) of Rule 6 is only as an option*

that if any input or input services used in exempted goods, credit should not be allowed and only with this intention some mechanisms for expunging CENVAT Credit attributed only to the exempted goods are provided. As per clause (b) (ii) & (iv), it is clearly provided that entire credit in respect of receipt and use of inputs/ input service is allowed when such input and input service is used in dutiable final products and taxable service. However, nowhere in Rule 6 it is provided that the input or input service used in dutiable goods shall not be allowed. The Revenue is only interpreting the term "total CENVAT Credit" provided under the formula. If the whole Rule 6(1)(2)(3) is read harmoniously and conjointly, it is clear that "Total CENVAT Credit" for the purpose of formula under Rule 6(3A) is only total CENVAT Credit of common input service and will not include the CENVAT Credit on input/ input service exclusively used for the manufacture of dutiable goods. If the interpretation of the Revenue is accepted, then the CENVAT Credit of part of input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of the Rule of CENVAT Credit Rules, 2004.

9. xxxxxxxxxx

10. From the above it can be seen that when anomaly was noticed, the Government has substituted the sub-rule (3A). The legislators very consciously substituted the Rule with intention to give a clarificatory nature to the provision of sub-rule (3A) so as to make it applicable retrospectively. It was all along not the intention of the Government to deny CENVAT Credit on the input/ input service even though used in the dutiable goods. Keeping the said view in mind, the substitution in sub Rule (3A) of Rule 6 was made. Therefore, the substituted provision of sub-Rule (3A) shall have retrospective effect being clarificatory.

4. We find that by relying upon the order dated 12.03.2019 (supra), this Bench of the Tribunal, in the case of *Deepak Fertilizers and Petrochemicals Corporation Ltd. Vs Commissioner of Central Excise & Service Tax – 2020 (7) TMI 486-CESTAT MUMBAI* and *Reliance Industries Ltd. Vs. Commissioner of Central Excise & Service Tax -2020 (9) TMI 787-CESTAT MUMBAI,* has also set aside the demand confirmed by the Department on the identical set of facts. Further, we also find that the Tribunal vide Final Order No. A/85843/2023 dated 20.04.2023, in the case of the appellants themselves, has set aside the demand confirmed for the period from 2011-12 to 2014-15.

5. In view of the fact that the issue arising out of the present dispute is no more open for any debate, in view of the orders (referred *supra)*, we do not find any merits in the impugned order, insofar as it

has confirmed the adjudged demands on the appellant company and imposed penalties on the other appellants. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha