CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85596 of 2016

(Arising out of Order-in-Original No. 17/COMMR/M-III/SSR/2015-16 dated 14.12.2015 passed by the Commissioner of Central Excise, Mumbai-III)

Emerson Network Power (India) Pvt. Ltd. **.... Appellants**
Plot No. C-20, Road No. 19, Wagle Industrial Estate,
Thane – 400 604

Versus

Commissioner ofCentral Excise, Mumbai-III **.... Respondent**
4th Floor, Vardaan Trade Centre,
MIDC, Wagle Estate,
Thane (W) – 400 604

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87412/2024

Date of Hearing: 02.12.2024

Date of Decision: 02.12.2024

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of Uninterruptible Power Supply System (UPS), Precision Environmental Control (i.e. Air Conditioning Machines) etc., falling under Chapters 84 and 85 of the Central Excise Tariff Act, 1985. The appellants avail CENVAT credit on inputs and input services and use the same in or in relation to manufacture and clearance of the dutiable final products as well as the exempted products. In relation to the exempted goods, during the disputed period, the appellants had paid 5%/6% of the value of the exempted goods, in compliance to the requirement of Rule 6(3) of the CENVAT Credit Rules, 2004. During the disputed period, the appellants had removed inputs (part of UPS) as such

from the factory premises by reversing the CENVAT Credit availed by them. The removal of inputs was effected as per the provisions of Rule 3(5) of the Rules of 2004. In respect of removal of the exempted UPS out of the factory, since the appellants did not comply with the requirement of Rule 6 of the Rules of 2004, the department has objected to non-compliance of such requirement and accordingly, initiated show-cause proceedings against the appellants. The Show Cause Notice (SCN) dated 23.04.2015 issued in this regard was culminated into adjudication order dated 14.12.2015, wherein the original authority has confirmed the adjudged demands against the appellants. Feeling aggrieved with the said adjudication order dated 14.12.32015 (impugned herein), the appellants have preferred this appeal before the Tribunal.

3. We find that the appellants in the present case had removed the inputs as such, before being put to use in the further manufacturing activity. Insofar as removal of 'inputs as such' is concerned, sub-rule (5) of Rule 3 of the Rules 2004 provides as under: -

> *"5. When inputs or capital goods on which CENVAT Credit has been taken, are removed as such from factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9."*

On reading of the above statutory provisions, it reveals that the manufacturer is required to pay an amount equal to credit availed in respect of the inputs removed as such from the factory. However, the department had alleged that the sale value of the exempted products removed from the factory were higher than the price at which the appellants had initially procured the material and, therefore, sub-rule (5) of Rule 3 of the Rules of 2004 shall not be applicable and they are liable to pay an amount as provided under sub-rule (3) of Rule 6 *ibid*.

4. On consideration of the statutory provisions, we are not in agreement with the observations made by the adjudicating authority that the appellants are required to pay the amount as provided under rule 6 *ibid*. Since, the inputs which were removed out of factory, were not used for the intended purpose i.e., for the manufacture of the final products (either dutiable or exempted), the only active provision contained in the CENVAT statute for recovery of the amount is sub-rule (5) of Rule 3 *ibid*, which provides that the assessee shall pay an amount equivalent to the CENVAT Credit availed by it on the inputs. Thus, in the circumstances of the present

case, confirmation of the adjudged demand, in our considered view, is not proper and justified.

5. We find that the issue arising out of present dispute was considered by the Co-ordinate Bench of this Tribunal, in the case of *Finolex Industries Ltd. Vs. Commissioner of CGST, Kolhapur-2023 (3) TMI 1478-CESTAT MUMBAI*. The relevant paragraph in the said order is extracted herein below: -

> *"4.2 Undisputedly EDC is an input for the appellant and they could have cleared the same on reversal of credit taken on the said inputs as per Rule 3 (5) of the Cenvat Credit Rules, 2004. Such removal of the inputs cannot be said to be trading in the inputs and the clearance of inputs against which the appellants have taken the credit need to be dealt in terms of the said rule 3 (5) and not in the terms of Rule 6, ibid. In case of Punjab Steels [2010 (260) ELT 521 (P&H)], Hon'ble High Court held as under:*
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> > *"Be that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(1) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the Finance Act, 1994. Rule 3(5) of the Rules only talks about the Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5, on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added or substituted so as to give a particular meaning."*

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha