CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85323 of 2016

(Arising out of Order-in-Original No.PUN-EXCUS-001-PR.COM-008-15-16 dated 06.11.2015 passed by the Principle Commissioner, Central Excise, Pune-I, Commissionerate)

Finolex Cables Ltd. **.... Appellant**
26-27, Mumbai-Pune Road,
Pimpri, Pune- 411 018.

Versus

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

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/87423/2024

Date of Hearing: 25.11.2024
Date of Decision: 25.11.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein, are *inter alia,* engaged in the manufacture of Insulated Electrical Wires and Cables, falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985. On removal of the said goods from the factory premises, the appellants duly discharge the appropriate Central Excise duty liability thereon. The appellants also avail Cenvat Credit of Central Excise duty paid on inputs, capital goods and service tax paid on the input services. In the normal course of business, based on the cash flow statements, the appellants used to invest surplus cash/ funds by way of subscription to mutual fund units. Though the appellants had an option of investing the said funds in various fixed deposit schemes, but in the present case, they had preferred for investing in the mutual funds for the specified period. On verification of the case records maintained by the appellants, the department had observed that the activity of putting surplus fund in the money in the mutual fund is a 'trading activity' and accordingly, Cenvat Credit taken on the input service was disputed by them on the ground that such Cenvat Credit was utilized for manufacture of the dutiable goods as well as for the trading activities. Therefore, by referring to Rule 6 of the Cenvat Credit Rules, 2004, the department had initiated show cause proceedings against the appellants, which were culminated into the adjudication order dated 06.11.2015, wherein the original authority has confirmed the part demand of Cenvat Credit in terms of Rule 14 *ibid* read with Section 73 (1) of the Finance Act, 1994. Besides, the impugned order has also imposed equal amount of penalty on the appellants under Rule 15 (3) *ibid,* read with Section 78 (1) *ibid.* Feeling aggrieved with the impugned order dated 06.11.2015, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. In order to construe an activity to be "trading", three essential conditions are required to be fulfilled namely, there should be two parties and a market to purchase and sell the goods involved; there should be transfer of right/title involved from the seller to the buyer, while selling the same; and there should be a fixed price known in advance while selling and buying for the said goods etc., In the case in hand, the appellants had utilized their surplus fund in investing in the mutual funds market and whatever gain or profit derived out of that investment, the benefit has only been accrued to the appellants and there is no involvement of any third party. Since, the activities undertaken by the appellants in investing money in the mutual funds is exclusively for their own benefit, without the investment of the element of sale or purchase of the goods, it cannot be said that the activities undertaken in investing money in the mutual funds market should be considered as a trading activity. Thus, we are of the view that the adjudged demands confirmed in the impugned order, holding that the investment in mutual funds market should be considered as trading is not sustainable. We find that the Co-ordinate Bench of this Tribunal in the case of Ambuja Cements Ltd. Vs.

Commissioner of Central Excise & GST, Nagpur - 2023 (5) TMI 806-CESTAT Mumbai, has allowed the appeal in favour of the appellants therein, holding that in absence of involvement of any activity of purchase and sale of units of mutual fund, such activities cannot be considered as trading in order to fall within the ambit of preview of Rule, 6 *ibid*.

4. Therefore, we are of the considered view that the impugned order passed by the learned adjudicating authority cannot be sustained on merits. Accordingly, the impugned order is set aside and the appeal is allowed in the favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM