CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87565 of 2017

(Arising out of Order-in-Original No. 02/2017/C/CEX/AUDIT/NGP dated 31.07.2017 passed by the Commissioner of CGST & Central Excise Audit-Nagpur.)

Brahmos Aerospace Pvt. Ltd. **.... Appellant**
P-J-10 Site, DRDL Complex,
Near Reliance Petrol Pump,
Bothli, Butibore, Nagpur- 441 108.

Versus

Commissioner of CGST and Central Excise, Nagpur-I **.... Respondent**
P.O. Box 81, Telangkhedi Road,
Civil Lines, Nagpur- 440 001.

Appearance:

Shri Sriram Sridharan, Advocate for the Appellant
Shri Priyesh Bheda, 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/85830/2026

Date of Hearing: 04.05.2026
Date of Decision: 04.05.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Availment of common input services in the provision of taxable as well as exempted services, is the subject matter of present dispute. During the disputed period 2011-12 and 2014-15, the appellant had availed common input services on telephone service, banking and financial service, insurance service etc., which were used/utilized for provision of both taxable as well as exempted services. Since, the appellant did not comply with the requirement of Rule 6 of the CENVAT Credit Rules, 2004, the department had initiated proceedings against the appellant for confirmation of the amount in terms of Rule 6 (3) (i) of the CENVAT Credit

Rules, 2004. The matter arising out of the show cause notice issued in this regard was adjudicated vide the impugned order dated 31.07.2017, wherein the learned adjudicating authority has confirmed an amount of Rs. 2,01,35,916/- along with interest and also imposed equal amount of penalty on the appellant. Against the impugned order dated 31.07.2017, the appellant has preferred this appeal before the Tribunal.

3. The appellant has *inter alia*, stated that the Nagpur Unit had availed total CENVAT Credit of around Rs.13 lakhs, out of which only Rs.4.7 lakhs CENVAT Credit is attributable to the exempted service provided by them. It was further contended by the appellant that they had reversed the entire CENVAT Credit availed in their Nagpur division, and thus, the proceedings cannot be initiated by the department for payment of an amount as contemplated under Rule 6 (3) (i) of the Rules of 2004.

4. On examination of the case records, we find that the appellant had submitted the electronic challan, evidencing payment of service tax amounting to Rs.4,79,256/-. However, such payment particulars were not reflected either in the show cause notice or in the impugned order, owing to the reason that the payment was made subsequent to passing of the impugned order. In view of the fact that the impugned order had confirmed the amount under the provisions of Rule 6(3) (i) of the Rules of 2004 and in view of the fact that the appellant had already reversed the entire CENVAT Credit availed by them, we are of the view that such factual aspect is required to be examined at the original stage.

5. Therefore, the impugned order is set aside and the appeal is allowed by way of remand to the original authority. The original authority should examine whether the amount of Rs. 4,79,256/- as claimed by the appellant to have been reversed, is correct or otherwise. If the amount had already been reversed, the other aspects provided under Rule 6 *ibid*, regarding filing of intimation shall not be insisted upon and such payment should be construed as if no CENVAT Credit had been availed by the appellant in respect of the input service used in the provision of the exempted service. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh. The appellant is directed to participate in the *de novo* adjudication of proceedings and should also submit the relied upon documents to demonstrate that the amount in

dispute had already been reversed by them after the date of passing of the impugned order.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM