CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Cross Objection No. 85690 of 2018

And
Service Tax Appeal No. 86139 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-709/2017-18 dated 24.11.2017 passed by Commissioner of (Appeals-I), Central Tax, Pune)

Commissioner of CGST & Central Excise, Pune-I .... Appellant
Division II (Pimpri), 1st Floor,
Excise Bhawan, Dr. Ambedkar Road,
Near Akurdi Railway Station, Akurdi,
Pune – 411 044.

Versus

M/s K. K. Enterprises .... Respondent
14, Sona Rupa Complex, Kharlwadi,
Pimpri,
Pune – 411 018.

APPEARANCE:

Shri Arun Bhaskar, Authorized Representative for the Appellant

Shri Akshay Havaldar, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/85854/2026

Date of Hearing: 02.07.2026

Date of Decision: 02.07.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Brief facts of the case are that the respondent herein, is engaged in providing the taxable services under the category of "Clearing & Forwarding Agency". The respondent availed CENVAT Credit of service tax paid on the input services. During the disputed period, the Audit Wing of the Department had observed that apart from providing the said

taxable service, the respondent is also engaged in the activity of trading and used the common input services for provision of taxable service as well as the trading activity, which is exempted. Thus, the Department had concluded that in respect of the common input service used for the trading activity, the provision of Rule 6(3) of the CENVAT Credit Rules 2004 would be applicable and the respondent was required to pay 5%/6% of the amount of the CENVAT Credit used in the exempted trading activity. The show cause notice issued in this regard was adjudicated by the learned Additional Commissioner of Central Excise, Pune, wherein the proposals made therein were dropped. In support of dropping the proceedings against the respondent, the original authority had recorded the following observation in the order dated 13.03.2017.

> *"Now, the question is once they had paid back the entire CENVAT Credit availed by them, are they to be still brought in the four corners of Rule 6 (3) again. The main intention of the Rule 6 of the CCR is to prevent any manufacturer or service provider from utilizing the CENVAT Credit on inputs or input services, while clearing exempted goods or providing exempted services. Once, the entire CENVAT Credit is surrendered by paying back the credit amount, it is equal to not availing the credit itself. This is a settled principle in the Central Excise law".*

3. On reading of the said observation made by the original authority, we find that the respondent though had taken the CENVAT Credit on the entire amount indicated in the invoices, but subsequently reversed the CENVAT Credit attributable to the trading activities. Thus, under such circumstances, since the CENVAT Credit has been reversed, it has to be construed that as if no CENVAT Credit at all has been availed in respect of the input services used/utilized for the exempted trading activity. The learned Commissioner (Appeals) has also upheld the order of the original authority and rejected the appeal filed by Revenue. Such action on the part of the learned Commissioner (Appeals), in our considered view, cannot be faulted with inasmuch as he has also applied the correct legal position by upholding the order of the original authority. Therefore, we do not find any justifiable reason to differ with the findings recorded in the impugned order.

4. In view of the above, we do not find any merits in the appeal filed by the Revenue and accordingly, the impugned order sustains and the appeal of Revenue is dismissed.

5. Cross objection stands disposed of.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha