(2016) 01 KAR CK 0171

In the Karnataka High Court

Case No : CEA No. 59/2014

Commissioner of Central Excise, Customs and Service Tax-LTU	APPELLANT
Vs	
Canara Bank Executor, Trustee and Taxation	RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:
Finance Act, 1994 — Section 65(12), Section 68, Section 73

Citation : (2016) 41 STR 788

Hon'ble Judges : N.K. Patil and S. Sujatha, JJ.

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, Advocate, for the Appellant; L.S. Karthikeyan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S. Sujatha, J.—1. This appeal is filed by the revenue challenging the order passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zone, Bangalore in ST/3565/2001-DB dated 27.05.2014.

2. The facts in brief are that the respondent is a banking company providing banking and other financial services under Section 65(12) of the Finance Act, 1994. The respondent is providing both taxable and exempted services. During the course of verification of input tax credit availed by respondent, it was observed by the authorities that the respondent had shown certain services namely, house keeping services, man power, recruitment services, credit card services, ATM services under the category of management, maintenance or repair service and technical and analysis service etc. which are one of the services specified in Rule 6(5) of the CENVAT Credit Rules (the ''Rules'' for short). The respondent department noticed that the respondent had wrongly utilized credits of service tax paid on these services to the extent of 100% of the amount of service tax payable on taxable output services for the period up to 31.3.2008 and for the period from 1.4.2008, they had not proportionately reversed the credit attributable to the exempted services. The respondent had utilized the

service tax credit in excess of 20% of the service tax payable on taxable output services permissible under erstwhile Rule 6(3)(c) of the Rules during the period up to 31.3.2008 and failed to pay the amounts towards the credit taken on the services attributable to exempted services during the years 2008-09 and 2009-10 respectively in terms of Rule 6(3A) of the Rules. The Commissioner of Central Excise and Service Tax issued show cause notice proposing to demand Rs. 2,15,14,945/- towards service tax credit taken on certain services wrongly classifying by the assessee under the category of management maintenance and repair service and technical testing and analysis service etc. specified in Rule 6(5) of the Rules along with interest and further demanded amount towards service tax credits taken during the years 2008-09 and 2009-10 on the services attributable to exempted services payable under the provision of Rule 6(3)(II) read with Rule 6(3A) of the Rules along with the interest and penalty on the said amount. The order in original came to be passed after hearing the respondent, reducing the amount originally proposed/demanded in the show cause notice to Rs. 81,23,732/- from Rs. 2,15,14,945/- and the demand in respect of wrong classification of services under Rule 6(5) of the Rules to Rs. 20,62,224/- from Rs. 56,68,210/-. Interest and penalty were demanded on this amount in terms of the Rules read with Section 78 of the Finance Act, 1974.

3. Aggrieved by this order, the respondent preferred an appeal before the CESTAT in ST/35/665/2012. The CESTAT rejected the appeal as regards the normal period, in respect of wrong classification of services and directed the assessee to make the payment of Rs. 3,71,501/- and interest of Rs. 4025/-. Thus, the appeal was partly allowed by the Tribunal.

4. Aggrieved by the said order, the revenue is before this Court raising the following substantial questions of law:

1. "Whether the CESTAT is empowered to allow the utilization of Cenvat Credit in excess of 20% till 31.03.2008 and as per the ratio prescribed thereafter in the statute by ignoring he provisions contained in Rule 6(3)(C) of the Cenvat Credit Rules?"

2. "Whether the CESTAT is right in holding that six months period is to be taken for arriving at 20% figure particularly in view of clear mandate of Section 68 of the Finance Act R/w. Rule 6(1) of the Cenvat Credit Rules"?

3. "Whether, the statutory provisions contained in Rule 6(3) of Cenvat Credit Rules, 2004 R/W. Rule6(1) of the Service Tax Rules, 1994 provide for payment of duty beyond the prescribed dated mentioned therein"?

4. "Whether the CESTAT is right in restricting the demand only for normal period instead of entire period in view of the provisions contained in proviso to Section 73 of the Finance Act? R/W. Rule 6(3)(c) and Rule 6(3)(ii)/Rule 6(3A)(b)(iii) and Rule 6(3A)(c)(iii) of the Cenvat Credit Rules 2004"?

5. Learned counsel appearing for the appellant placing reliance on Rule 6(3)(IX)

(c) of the Rules contended that the respondent has utilized CENVAT Credit exceeding 20% of the amount of service tax payable on taxable output service, contrary to the Rules. The learned counsel further contended that the Tribunal without appreciating the statutory provisions based on sentiments, proceeded to decide the matter arbitrarily, directing the respondent to make payment of Rs. 3,71,501/- for the normal period along with the interest for a month''s period. It is further submitted that in terms of amended provisions of Rule 6(6) of the Rules, the respondent was liable to pay the amount determined by the original authority which is wrongly waived off by the Tribunal without assigning any valid reasons. Accordingly, he seeks to set-aside the order passed by the Tribunal and to confirm the order passed in original alternatively, learned counsel seeks to remand the matter to the Original Authority to examine the invoices vis-?-vis certificates issued by the Chartered Accountant as regards the availment of CENVAT Credit by the respondent, whether exceeds 20% of the taxable output service or not in terms of Rule 63(3)(c) of the Rules and with regard to the other issues raised in the appeal.

6. Per contra, learned counsel appearing for the respondent though supported the order passed by the Tribunal, fairly submits that the matter may be remanded for fresh consideration to the Original Authority subject to all contentions are left open.

7. The submission made by the learned counsel for the parties is placed on record. It is also noticed by us that the Tribunal without following the statutory provisions contemplated under the Act, proceeded to direct the assessee to make the payment of Rs. 3,71,501/- towards the amount due for the normal period with interest of Rs. 4025/- for a month and closed the matter as said to have been suggested. The Tribunal proceeded to pass the order based on sentiments which is uncalled for, particularly, while adjudicating the revenue matters.

8. In the given circumstances, we are of the opinion that it would be appropriate to remand the matter back to the Original Authority to consider the matter afresh after providing an opportunity of being heard to the parties.

9. For the reasons stated above, without going into the questions of law raised, this appeal is disposed of and the matter is remitted to the Original Authority for fresh consideration in the light of the observations made above. All contentions are left open. The Original Authority shall pass the orders as expeditiously as possible after providing an opportunity of being heard to both the parties. Ordered accordingly.

