(2020) 11 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax E.H. Application No. 60148 Of 2020 In Service Tax Appeal No. 60131 Of 2020

Mohan International Builders @Hash Commissioner Of CE And ST, Jalandhar

Date of Decision : 24-11-2020

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(e), 6(3), 6(3)(i)

Citation : (2020) 11 CESTAT CK 0016

Hon'ble Judges : Ashok Jindal, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Advocate : Vikrant Kackria, Bhasha Ram

Final Decision : Allowed

Judgement

1. The appellant has filed an application for early hearing of the appeal on the ground that in the issue in hand is squarely covered by the decision of

this Tribunal in the case of M/s Surya Contractors Pvt Ltd vs. CCE & ST, Jalandhar in Final Order No. A/60293/2020 dt. 27.02.2020. Therefore, the

application for early hearing be allowed.

2. Considering the submission made by the ld. Counsel for the appellant, we allow the application for early hearing of the appeal and the appeal is to

be taken up for disposal today itself with the consent of both sides.

3. The appellant is in appeal against the impugned order wherein the demand has been confirmed under Rule 6(3) of Cenvat Credit Rules, 2004.

4. The facts of the case are that the appellant is a registered contractor and providing Works Contract Service. During the course of audit for the

period July, 2012 to June, 2017, it was observed that the appellant was engaged and providing the services, namely, works contract services and the

audit objection was raised that the service provided is partly exempted services which is the part of works contract service to be treated as exempt

service in view of Rule 2(e) of the Cenvat Credit Rules, 2004 and as such the appellant was required to pay an amount under Rule 6(3)(i) of cenvat

credit availed by them. Therefore, the proceedings were initiated against the appellant by issuance of the show cause notices asking appellant to

reverse cenvat credit in terms of Rule 6(3) of CCR, 2004 as they are providing exempted services. The matter was adjudicated, the demand on

account of reversal of cenvat credit was confirmed alongwith interest and penalty was also imposed. Against the said order, the appellant is before us.

5. The ld. Counsel for the appellants submits that on identical facts in the case of M/s Surya Contractors Pvt Ltd vs. CCE & ST, Jalandhar vide Final

Order No. A/60293/2020 dt. 27.02.2020, this Tribunal has dealt the issue and held that the assessee is entitled to avail the Cenvat Credit and

provisions of Rule 6(3) are not applicable to the facts of the case. Therefore, the impugned order be set aside.

6. On the other hand, the ld. AR submitted that the Revenue is free to raise the issue in the light of the decision of the Larger Bench of this Tribunal in

the case of Steel Strips vs. CCE Ludhiana â?" 2011 (269) ELT 257 (Tri. LB).

7. Heard the parties.

8. As the facts of the case similar to the facts of the case of M/s Surya Contractors Pvt Ltd (supra), which is not disputed by any side. We have gone

through the said decision, wherein this Tribunal has observed as under:

â??5. Heard both sides and considered the submissions.

6. For better appreciation of the facts of the case and applicable rules, we are incorporating Rule 6 (3) of CCR, 2004 which are as under:-

â??RULE 6. [Obligation of a manufacturer or producer of final products and a provider of output service].

(3)(a) A manufacturer who manufactures two classes of goods, namely:-

(i) non-exempted goods removed;

(ii) exempted goods removed;

Or

(b) a provider of output service who provides two classes of services, namely:-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely:-

(i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a

maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the

payment relates and the credit of input and input services taken during that period;

or

(ii) pay an amount as determined under sub-rule (3A):

The provision of Rule 6 (3) are applicable when the assessee providing exempted as well as taxable services and is not maintaining separate

account for inputs/input services. Admittedly, in the case in hand, the service as a whole provided by the appellant is works contract service

and the same is taxable services. The Scheme of Rule 6 readwith Rule 2(e) really shows that Rule 6 is applicable only in respect of distinct

transactions of services wherein the appellant is providing two distinct transaction one by way of a taxable service and another by way of

an exempted service under Rule 2(e). Rule 6 doesn't become applicable in respect of the same taxable service where the part of it is being

exempted by way of any notification issued which exempts certain portion of value of the same taxable service provided by the appellant.

7. In the present case, we find there is only one transaction of Works Contract Service which is taxable service of which certain portion has

been exempted. There are no distinct transactions for two services involved. In such a situation, Rule 6 doesn't become applicable, it is only

one distinct service. It is not even the case of the department that the appellant was providing two different services when it is one service

where exemption has been provided to certain value would not mean that the appellant was providing exempted service which otherwise is

taxable. As Rule 6 (3) was not applicable, the demand made under Rule 6(3) cannot be sustained.

8. In view of this, we do not find any merit in the impugned order, the same is set-aside.

9. In result, appeal is allowed with consequential relief.â??

9. As the issue has already dealt with this Tribunal. Therefore, we do not find any merit in the impugned order. Accordingly, we hold that provisions of

Rule 6(3) of CCR, 2004 are not applicable to the facts of the case, consequently no demand is sustainable against the appellant.

10. In view of this after setting aside the impugned order, we allow the appeal with consequential relief, if any.

(Operative part of the order pronounced in the court)

