(2021) 10 CESTAT CK 0069

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20534 Of 2021

M/s Spraying Systems India Private Limited — APPELLANT

Vs

C.C.,C.E. And S.T-Commissioner Of Central Tax, Bangalore North West Commissionerate — RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 6(1), 6(2), 6(3A), 6(3), 6(3)(i)

Citation : (2021) 10 CESTAT CK 0069

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Brief facts leading to the present dispute, inter alia, are that the appellant is engaged in manufacture and clearance of Spray Nozzles and are availing the facility of CENVAT credit on inputs and input services in terms of CENVAT Credit Rules, 2004 (CCR); that during the course of audit for the period April 2011 to March 2013 by Departmental officers, it was observed, that the appellant are engaged in manufacture of dutiable Spray Nozzles and trading of goods such as pipes and compressors; that the appellant was availing CENVAT credit on certain input services which were commonly used in manufacturing and trading activity; that no separate accounts were maintained for the same; that immediately upon intimation by the Departmental Officers, the appellant reversed credit amounting to Rs.18,93,884/- as the credit attributable to the common input services used for trading/exempted supplies as well as taxable supplies, for the period of July 2010 to March 2015, such reversal was done without applying the formula prescribed under Rule 6(3A) of the CCR 2004, etc.

2. SCN was issued based on the audit note, without further investigation, wherein a demand was proposed under Rule 6(3) at the rate of 5% on the difference value of sale amounting to Rs.54,71,066/- for the period July 2010 to March 2015 along with interest and penalty and it was further proposed that the

credit reversed by the appellant should be appropriated against the demand raised in the SCN. The adjudicating authority dropped the demand of Rs.7,29,273/- for the period of July 2010 to March 2011 and confirmed the demand of Rs.47,41,793/- being the amount payable in terms of Rule 6(3)(i) of CCR, 2004 for the period July 2010 to March 2015 and also appropriated the amount of Rs.18,93,884/- (credit reversed); against the confirmed demand, the matter travelled up to Customs, Excise & Service Tax Appellate Tribunal, Bangalore, and Final Order No.21172-21173/2018 dated 14.08.2018 was passed wherein, so far as the present issue is concerned for April 2011 to June 2012, the matter was remanded back to the original authority directing appellant to exercise their option in terms of Rule 6(3)(a).

3. It is the case of the appellant that the appellant had already reversed the CENVAT credit and had also exercised option to reverse the credit on proportionate basis as per Rule 6(3A).

4. The matter was taken up for de novo adjudication and vide de novo Order-in-Appeal, the adjudicating authority has confirmed the demand of Rs.5,94,034/- for the disputed period along with applicable interest and penalty, against which, the present appeal is filed. The reasons given by the authority below are that the appellant had previously reversed the demanded amount for the period under dispute and that the appellant had made the payments after exercising option under Rule 6(3A) after the due date had elapsed.

5. Heard rival contentions and have carefully gone through the decisions/orders relied upon during the course of arguments, I find that in one of the recent orders, learned Ahmedabad Bench of CESTAT in the case of CCE Vs Reliance Industries Ltd, 2019 (28) GSTL 96 (Tri. Ahmd.) while analysing an almost identical issue, has held as under:

"8. From the reading of Rule 6(1), it is clear that only in respect of input or input service used in exempted goods are not allowed. That means input or input service used in taxable service/dutiable goods, Cenvat credit is allowed. Sub-rule (2) of Rule 6 is only as an option that if any input or input services used in exempted goods, credit should not be allowed and only with this intention some mechanisms for expunging Cenvat credit attributed only to the exempted goods are provided. As per clause (b)(ii) & (iv), it is clearly provided that entire credit in respect of receipt and use of inputs/input service is allowed when such input and input service is used in dutiable final products and taxable service. However, nowhere in Rule 6 it is provided that the input or input service used in dutiable goods shall not be allowed. The Revenue is only interpreting the term "total Cenvat credit" provided under the formula. If the whole Rule 6(1), (2) and (3) is read harmoniously and conjointly, it is clear that "Total Cenvat Credit" for the purpose of formula under Rule 6(3A) is only total Cenvat credit of common input service and will not include the Cenvat credit on input/input service exclusively used for the manufacture of dutiable goods. If the interpretation of the Revenue is accepted, then the Cenvat credit of part of input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of the Rule of Cenvat Credit Rules, 2004.

6. From the above, I find that the issue in the case in hand is squarely covered by the ratio laid down in the above case. I also find that above ratio has been reiterated in a number of decisions/orders by various judicial fora. Further, I also observe that the adjudicating authority has raised the demand of Rs.5,94,034/- inter alia alleging that there was a delay in exercising option, which is only as per the directions of this Bench in the first round, which should have been given by the adjudicating authority himself. Moreover, the demand raised for a mere delay in exercising the option is highly disproportionate since the delay, if at all, is a mere irregularity considering the facts of this case and the same may, at the most, attract some interest which perhaps has even been paid by the appellant while reversing the amount.

7. In view of the above, the impugned order cannot sustain and accordingly, the same is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 29/10/2021)