courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 02/09/2026

(2023) 09 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.75645 Of 2017

M/s. Super Smelters Limited APPELLANT

Vs

Commissioner Of Central Excise, Bolpur RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(e), 3(5), 6(1), 6(3)

Citation : (2023) 09 CESTAT CK 0028

Hon'ble Judges : Ashok Jindal, Member (J);K. Anpazhakan, Member (T)

Bench : Division Bench

Advocate : V.K.Puri, J.Chattopadhyay

Final Decision : Disposed Of

Judgement

Ashok Jindal, Member (J)

1. The facts of the case are that the appellant is manufacturer of sponge iron, M.S. Billets etc.. In the course of their manufacturing, the appellant brought coal, pig iron etc.. They availed cenvat credit as their inputs were used in or in relation to manufacture of their final products on which duty was paid at the time of clearance of the same. The appellant was availing cenvat credit on inputs as well as input services such as Survey Fees, Professional charges, Sampling & Analysis Charges, Commission Charges, Security Charges etc.. During the period from April 2011 to February 2015, the appellant had removed some quantities of their inputs to their sister units as well as sold in the open market a small percentage of unwanted inputs including undersized coal or coal containing large percentage of fines. Therefore, they removed input as such from their factory on reversal of cenvat credit in terms of Rule 3(5) of the Cenvat Credit Rules, 2004. The allegation against the appellant is that in the guise of removal of inputs as such, the appellant was engaged in rendering of services namely, 'Trading of Goods', which service was exempt as per the explanation to Rule 2(e) of the Cenvat credit Rules, 2004. The appellant was not maintaining separate accounts in respect of the credit attributable to taxable and exempted trading services under

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-super-smelters-limited-appellant...

rule 6(1) of CCR Rules. Therefore, the appellant was liable to pay an amount 6%/10% of the exempted goods cleared by them. Therefore, the show cause notice was issued to the appellant on 24.04.2015, which was adjudicated and demand in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 was confirmed. Aggrieved from the said order, the appellant is before us.

2. The contention of the appellant is that the appellant is manufacturing dutiable goods paying duty thereon. Some of the inputs they have removed as such on reversal of cenvat credit. In that circumstances, the proceedings against the appellant are not sustainable. He further submits that although they have reversed proportionate cenvat credit on input services availed by them along with interest, but the same was not required to be reversed by them. To support his contention, he relied on the decision of the Hon'ble Punjab & High Court in the case of Commissioner of C.Ex., Chandigarh-I v. Punjab Steels [2010 (260) E.L.T. 521 (P & H)]. He also relied on the decision of the Punjab & Haryana High Court in the case of Commissioner vs. Bassi Alloys Pvt.Ltd. [2011 (24) S.T.R. J174 (P & H)].

3. On the other hand, the Ld.AR for the department contended that the appellant is engaged in activity of trading of coal and the said activity during the impugned period was declared as exempted service and the appellant is not maintaining separate account for providing dutiable as well as exempted services, in that circumstances, the appellant is liable to pay 6%/10% of the value of the exempted service provided by them.

4. Heard the parties, considered the submissions.

5. In this case, it is an admitted fact that the appellants were engaged in the activity of trading of coal as evident from the books of accounts. The trading activity has been declared exempted service in terms of Cenvat Credit Rules, 2004.

6. In that circumstances, although the appellant has reversed cenvat credit as input cleared as such, but is required to reverse proportionate cenvat credit on input services used for providing exempted service.

7. The case law relied upon by the appellant are not relevant to the facts of this case as in those cases, the case of the revenue was that the appellant is clearing input as such, therefore the issue arose whether in that circumstances, the appellant was required to reverse proportionate cenvat credit on input services or not, whereas in the case in hand, the case of the revenue is that the appellant is providing exempted service namely trading activity, in that circumstances, whether the appellant is required to reverse proportionate cenvat credit with regard to input and input services used in providing final exempted service or not? Therefore, the case law relied upon by the appellant are distinguishable from the facts and circumstances of the case, as the appellant has already revered proportionate cenvat credit for providing the exempted service namely trading activity. In that circumstances, proportionate reversal of cenvat credit on

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-super-smelters-limited-appellant…

inputs cleared as such and proportionate cenvat credit attributable to exmepted service has already been reversed by the appellant the same is sufficient to meet the ends of justice.

8. In view of this, we hold that the appellant is required to reverse proportionate cenvat credit on inputs cleared as such and proportionate input services used for providing trading activities i.e. trading of coal, therefore, there is no requirement of payment of 6%/10% of the value of trading activity provided by the appellant.

9. In that circumstances, we hold that the demand on account of non-maintenance of separate account for input or input services for final exempted service does not arise and the reversal of cenvat credit on input and proportionate credit on input service is sufficient to meet the ends of justice.

In view of this, we dispose of the appeal.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-super-smelters-limited-appellant…