

(2015) 06 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 54086 Of 2014, Service Tax Appeal No. 53652 Of 2014

M/s Tanay LandconIndia Pvt. Ltd.

APPELLANT

Vs

CST And ST, Jaipur

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 6, 6(2), 6(4)

Citation : (2015) 06 CESTAT CK 0007

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Tarun ?Gulati, Sparsh Bhargava, Anupam? Mishra, Amresh ?Jain

Final Decision : Allowed

Judgement

1. As we shall establish in the following analysis, the impugned order is grossly perverse and benefit of minimal analysis of relevant facts and the material on record.

2. On 18/10/12, show cause notice was issued to the appellant/assessee proposing recovery of Rs.73,68,121/- for irregular/unauthorized availment of

Cenvat credit in violation of Rule 6 of the Cenvat Credit Rules, 2004, on the ground the appellant was providing both taxable and exempted services

but failed to maintain separate accounts in respect of these services and availed Cenvat credit on inputs which were commonly used for both taxable

and exempted services.

3. In response, the assessee vide the response dated 4th February 2014 clearly and categorically pleaded in paragraph 6(c) of the reply that the

allegation of availment of Cenvat credit on common inputs and common input services is incorrect and baseless and it had availed credit only in

respect of inputs and input services used for providing taxable services. Appellant also categorically pleaded that the show cause notice failed to

reveal any basis for the allegation of irregular availment of credit on inputs related to both taxable and exempted services.

4. In the adjudication order, after reproducing contents of the show cause notice in paragraph 1 to 8, the response of the assessee is set out in

paragraphs 9 to 22 including contentions urged by the appellant during personal hearing. In para 16 of the impugned order, the specific contention of

the appellant regarding non-availment of Cenvat credit on common inputs and input services used for both taxable and exempted goods is duly noticed.

The impugned order sets out the provisions of Rule 6 in para 25. In para 26, the order jumps to the conclusion, un-substantiated by any evidentiary

analysis, that the appellant failed to establish or prove that credit was not availed on inputs and input services used for providing both taxable and

exempted services.

5. In para 27 the Authority records an observation that the appellant did not dispute to be engaged in providing both taxable and exempted services and

to have availed Cenvat credit on input/input services such as cement, insurance of vehicle, advertising services which are common. We find no basis

whatsoever for this conclusion recorded by the Authority. The appellant nowhere admitted to have availed Cenvat credit on common inputs/input

services used for providing both taxable and exempted output services. This finding by the Authority, of an admission by the appellant is perverse,

contrary to the categorical denial by the appellant, of availment of common inputs/input services as contained in para 6(c) of its reply dated 04/2/14 to

the show cause notice and is therefore a finding which is contrary to the record.

6. In para 27, the Authority observes that ""it is not the duty of the Department to establish that the appellant have not maintained separate records"".

This observation is fallacious. Revenue had alleged that the appellant failed to maintain separate accounts. The appellant disputed this allegation and

specifically pleaded to have maintained separate accounts and to have used only, those inputs/input services which were used for providing taxable

services. If there was a doubt either regarding maintenance of separate accounts or utilizing credit on common inputs/input services, as required under

Rule 6(2) of the Cenvat Credit Rules, the authorities ought to have summoned

the appellants records or should have verified from the appellant's premises, whether assessee had incorrectly pleaded to have maintained separate records while it did not. In the absence of any such notice issued and in view of the failure to have inspected the appellant's records, law does not authorize a conclusion of non- maintenance of separate accounts, without any basis. The mis-conception substrating the impugned order, that it is the appellant's burden to establish maintenance of separate accounts, when Revenue alleges such non-maintenance and alleges utilization of credit on common inputs, is fatal to the validity of the impugned order.

7. Learned DR would contend that the show cause notice dated 18/10/12 is accompanied by three RUDs i.e., Annexure A, the Assessee's letter dated 04/1/11 and IAR No.906 of 2010; that these RUD's constitute the basis for issuance of the show cause notice and these are conclusive proof of the fact that the appellant failed to maintain separate accounts in respect of taxable and exempted services and of availment of credit on common inputs and input services. This is a contention that is stated to be rejected. An Annexure to a show cause notice do not per-se provide a legal basis for a conclusion in an adjudication that the appellant violated provisions of Rule 6(2) by failing to maintain separate accounts in respect of taxable and exempted services or had utilized common inputs/input services. There is not a single sentence in the entire adjudication order which records the evidence or material on the basis of which the Adjudicating Authority records the finding that the appellant failed to maintain separate accounts. We have earlier noticed that in para 27 it is observed that it is not the burden of Revenue to establish that the appellant maintained separate accounts. In the absence of the Adjudicating Authority recording a clear finding that the assessee failed to maintain separate accounts and on the basis of some evidence in support of such conclusion, the inference of a failure to maintain separate accounts, is a finding of fact based on no evidence. It is therefore perverse. We have earlier also noticed a mis-statement of fact in para 27, i.e., the observation that the appellant admitted to have availed Cenvat credit on common inputs and input services.

8. For the aforesaid reasons, the impugned order cannot be sustained.

9. Learned Counsel for the appellant refers to the judgment of this Tribunal in Okay Glass Industries vs. CCE, Kanpur reported in 2015-TIOL-428-

CESTAT-DEL. to alternatively urge that even if the appellant had availed Cenvat credit on inputs or input services which were common to both

taxable and exempted services, the demand could legally be confined only to the extent of the credit availed on exempted services. Learned Counsel

has provided an executive summary whereby it is claimed that the total credit availed during the period 2008-2009 to September 2010 is Rs.3,17,604/-

including Rs.1,36,218/- availed in respect of capital goods on which no reversal is required to be made under Rule 6(4); and that a credit of Rs.1,81,386/-

is alone, if at all, attributable to inputs and input services which amount is in fact relatable to inputs/input services used for taxable services, but not

inputs or input services used for providing non-taxable services. On the basis of this submission it is contended, that if it was found that the appellant

had availed credit on inputs and input services which are common to both taxable and exempted services, the demand should be restricted to

Rs.1,81,386/-, which is the position that obtains on the basis of *Okay Glass Industries vs. CCE, Kanpur (supra)*.

10. On the analysis above, we set aside the impugned order. Normally we would have allowed the appeal in toto based on the perverse finding in para

27 of the order inference of availment of credit on common inputs/input services based on an admission (non-existent) of the appellant, of having

availed Cenvat credit on common inputs and input services of both taxable and exempted services and the other finding regarding the burden of proof

being on appellant to establish that it had not maintained separate records. However, such a course of disposition of an appeal would not enable

adjudicating authorities to pursue judicial discipline in recording adjudication orders and eschew perversity in adjudicating functions.

11. The principle is too well established that reasons are the links between material on which conclusions are based and the eventual conclusions, vide

Union of India vs. M.L. Capoor - AIR 1974 SC 87.

12. In the circumstances, we quash the impugned order and remit the matter to the respondent for passing a fresh adjudication order in the light of the

observations herein. The respondent shall record the material/evidentiary basis for a conclusion that the appellant failed to maintain separate

accounts as mandated by Rule 6(2) of the Cenvat Credit Rules, 2004 and for a conclusion that it had utilized credit of inputs/input services utilized for

providing exempted output services, if the respondent is satisfied that such conclusions are warranted. No costs.

(Dictated and pronounced in open court)