
(2021) 04 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20048 Of 2021

Popular Vehicles and Services Ltd.

APPELLANT

Vs

Commissioner Of Central Tax And Central Excise, Cochin

RESPONDENT

Date of Decision : 16-04-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 6(3), 6(3A), 6(3)(i), 15(1)
Finance Act, 1994 — Section 75, 76

Citation : (2021) 04 CESTAT CK 0020

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : K.B. Nanaiah

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 16/09/2020 passed by the Commissioner (Appeals) where the Commissioner (Appeals) has rejected the appeal of the appellant and confirmed the demand of Rs. 23,725/- (Rupees Twenty Three Thousand Seven Hundred and Twenty Five only) under Rule 6(3)(i) of Cenvat Credit Rules, 2004 with interest. Briefly the facts of the present case are that the appellant is an Authorized Service Station and on verification of the appellant's financial record, the Department entertained the view that the appellant is rendering free service and warranty labour charges which is a taxable service but the appellant has not paid any service tax on the said taxable service and the appellant has also not maintained separate accounts of input services utilized for providing exempted services as required under Cenvat Credit Rules, 2004 and has not complied with the conditions prescribed under Rule 6(3) of the Cenvat Credit Rules, 2004. On these allegations, 4 show-cause notices were issued and after following the due process, the demand to the extent of Rs. 23,725/- (Rupees Twenty Three Thousand Seven Hundred and Twenty Five only) was confirmed along with interest under Section 75 and the original authority has also imposed penalty of Rs. 2,000/- (Rupees Two Thousand

only) in terms of Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 76 of the Act. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the same. Hence the present appeal.

2. None appeared on behalf of the appellant and the appellant vide its letter dated 06/04/2021 has requested the Tribunal to decide the matter on merit after considering the orders of the Deputy Commissioner, Cochin who has decided the identical matter pertaining to Ernakulam North branch which was accepted by the Department. The appellant has also furnished the copy of two decisions on identical issue decided by Commissioner (Appeals), Cochin.

3. Heard the learned AR and perused the records.

4. The issue involved in the present case is whether the appellant is liable to pay service tax on free service and warranty labour provided to customers without any consideration. As per the Department, the free service is an exempted service and therefore, the appellant is liable to reverse 6/7% of the value of exempted service which was not done by the appellant.

5. On the other hand, the grounds raised by the appellant in the grounds of appeal is that the appellant does not receive any income with regard to free service and warranty labour provided to customers and these services are rendered free of charges and the Department has no case that the cost of these services are reimbursed to the dealers. Hence, there cannot be any levy of service tax. Further, I find that the cost of these services are included in the cost of the product accounted at sales showroom and VAT has been paid at the time of sale of the vehicle which is cleared from the cenvat reversal at sales showroom under Rule 6(3A). Further, I find that the learned Commissioner neglected the facts that the income accounted in the Books of Account are through notional entries and these costs are included in the cost of product as confirmed in the refund order. Further, I find that the Department vide its Order-in-Original Nos. 52, 53, 54, 55 & 56/2019 ST dated 19/08/2019 issued to another branch of the company in the identical issue confirmed that the income in service centre for free service and warranty labour is booked through notional entries being worked under the concept 'separate profit centre' and corresponding expense is accounted in Head Office books and thereby net income is ZERO. Further it is also held that no service tax can be levied on amounts representing the dealer's margin or any part of it which was already subject to sales tax. I further note that the Department has not filed appeal against the order which has attained finality and further I find that the Commissioner (Appeals), Cochin in Order-in-Appeal No. 352 to 356/2013 has also allowed the appeal of the assessee and held that no service tax is due on free services and warranty service and set aside the order of demand on free service. In view of the various orders where the Department itself has dropped the demand on free service, I find that confirmation of demand of Rs. 23,725/- (Rupees Twenty Three Thousand Seven Hundred and Twenty Five only) under Rule 6(3)(i) of Cenvat Credit Rules, 2004 is not sustainable in law and I set aside

the demand by allowing the appeal of the appellant.

(Order was pronounced in Open Court on 16/04/2021)