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Indirect Tax/Input Tax Credit

CENVAT exclusively related to dutiable goods not required to be included in total CENVAT credit while apportionment between dutiable goods and exempted goods – CESTAT Allahabad Bench

Case Name: M/s Honda Motor India Pvt. Ltd. Versus Commissioner, GST & Central Excise, Gautam Budh Nagar

Case No.: Excise Appeal No.70347 of 2018 **Dated:** 09.10.2024

(Order by the Allahabad Bench of CENVAT is enclosed)

In a major relief to Honda Motors, the Allahabad Bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that the CENVAT Credit, **which pertains to input services exclusively used in dutiable goods, is not required to be included in the "total CENVAT Credit"** for apportionment between exempted services and dutiable goods.

Fact of the Case

The Appellant is also engaged in trading of goods, which is an exempted service and thus, no Cenvat credit was availed by the Appellant on the input services, which were exclusively used for trading activity. However, certain input services, on which Cenvat credit was availed, namely, Warehouse Support Services, Goods Transport Agency (inward freight), Renting of Warehouse, Legal & Consultancy Services etc., were used by the Appellant in both manufacture of dutiable goods and provision of exempted services i.e. trading.

The common Cenvat credit was availed by the Appellant, following the procedure of proportionate reversal of Cenvat Credit amount attributable to exempted service under Rule 6(3A) of the CENVAT Credit Rules, 2004 as per the formula prescribed therein, under due intimation letter filed at the beginning of each Financial Year, to the Excise Range Office.

Issue Raised

The issue raised was whether the CENVAT Credit, availed on the input services used exclusively in the manufacture of the dutiable goods, was required to be included in the numerator for apportioning the common credit between the exempted service (trading) and dutiable goods.

Conclusion In Favour of Honda Motors

The tribunal held that the CENVAT Credit, which pertains to input services exclusively used in dutiable goods, is not required to be included in the "total CENVAT Credit" for apportionment between exempted services and dutiable goods. It has been held that for apportionment of CENVAT Credit, only such credit which was availed on input service used commonly in exempted service and dutiable goods has to be taken into consideration.

The tribunal while allowing the appeal held that to invoke proviso to Section 73(1), the conditions stated therein is required to be fulfilled, it should be proved that the Appellant had, by some positive act, suppressed the fact from the department with an intention to evade irregular Cenvat credit. There is no suppression of facts.

The tribunal held that since the demand of Cenvat Credit itself is not sustainable, penalty is not imposable and consequently, no interest is also recoverable.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70347 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1475-17-18 dated 15/12/2017 passed by Commissioner (Appeals) Central Tax, Noida)

M/s Honda Motor India Pvt. Ltd. **.....Appellant**
(Plot No.A-1/2, Sector 40-41, Surajpur Kasna Road, Greater Noida, Gautam Budh Nagar, U.P.)

VERSUS

Commissioner, GST &

Central Excise, Gautam Budh Nagar **....Respondent**

(Gautam Budh Nagar)

APPEARANCE:

Ms. Ushmeet Kaur Monga, for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70638/2024

DATE OF HEARING : 21.05.2024
DATE OF DECISION : 09.10.2024

P.K. CHOUDHARY:

The present appeal is arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1475-17-18 dated 15/12/2017 passed by Commissioner (Appeals) Central Tax, Noida.

2. The facts of the case in brief are that the Appellant is engaged, *inter alia*, in packing and labelling of parts of motor vehicles and safety headgears, and since the said activity amounted to manufacture under Section 2(f) of the Central Excise Act, 1944, the Appellant duly discharged Excise duty on the clearances of its final products.

3. The Appellant availed and utilized the Cenvat credit earned on input services for discharging its duty liability, in

terms of the provisions of the Credit Rules. In addition to this, the Appellant is also engaged in trading of goods, which is an exempted service and thus, no Cenvat credit was availed by the Appellant on the input services, which were exclusively used for trading activity. However, certain input services, on which Cenvat credit was availed, namely, Warehouse Support Services, Goods Transport Agency (inward freight), Renting of Warehouse, Legal & Consultancy Services etc., were used by the Appellant in both manufacture of dutiable goods and provision of exempted services i.e. trading. Such common Cenvat credit was availed by the Appellant, following the procedure of proportionate reversal of Cenvat Credit amount attributable to exempted service under Rule 6(3A) of the CENVAT Credit Rules, 2004[1] as per the formula prescribed therein, under due intimation letter filed at the beginning of each Financial Year, to the Excise Range Office.

4. An Audit of the Appellant's records was conducted by the Department for the period April 2013 to March 2014. The audit team raised an objection that the Appellant had short reversed an amount of Rs. 2,93,347/- towards Cenvat credit under Rule 6(3)(b) of the C.C.R.2004 as the Appellant took into consideration only the credit on 'common input services' instead of total Cenvat credit. However, the aforesaid amount was deposited by the Appellant by way of reversal of Cenvat credit under protest. It was alleged that while reversing proportionate Credit under Rule 6(3)(ii), the Appellant had only considered the amount of Cenvat credit "attributable to the common input services" used in both-the manufacture of dutiable goods as well as provision of exempted service (i.e. trading), instead of taking into consideration the total Cenvat credit taken on all input services including the common input services, for the purpose of such reversal. Thus, it was alleged by the Department that such computation adopted by Appellant

[1] C.C.R.2004

has resulted into short reversal of an amount determined under Rule 6(3A) of the C.C.R.2004.

5. Based on such audit objections, a Show Cause Notice [2]dated 22.07.2015 was issued to the Appellant, proposing to recover the short-paid amount of Rs. 9,11,357/- determined under Rule 6(3A)(b) of the C.C.R.2004, along with interest and penalty. The relevant part of the allegation in the SCN is as follows:

> *"7. And whereas, the party have failed to comply with the conditions in terms of Rule 6(3A} (b) & Rule 6{3A) (c) of the Cenvat Credit rules, 2004, as while calculating the amount of reversal under the above said rules, t**hey have taken only common Input service credit instead of total input service credit** availed during the corresponding year and thereby short reversed of Rs. 2,94,338/- + Rs. 1,51,949/- +Rs. 1 1 73 1 172/-& Rs.2,92,348/- total Rs.9,11,357/-. Out of which, the party have already reversed Rs. 2,92,347/- during audit under protest."*

6. The reply to the SCN was duly filed on 20.11.2015 by the Appellant, elaborating the rationale behind using common Cenvat Credit and also stated the Circular No. 754/70/2003-CX dated 09.10.2003 and Circular No. 868/6/2008 -CX dated 09.05.2008 in support. It clarified that input services exclusively relating to manufacture of dutiable goods is eligible for Cenvat credit under Rule 3 of the CCR. Rule 6 only imposes an obligation not to avail Cenvat credit on input services relating to provision of exempted services and manufacture of exempted goods.

7. Thereafter, a statement of demand dated 29.02.2016 was issued proposing to demand reversal of credit on the same ground cited in the aforesaid SCN for the period 2014-15. The Appellant filed their reply vide letter dated 22.03.2016.

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[2] SCN

8. After considering the defence reply filed by the Appellant on 20.11.2015 and 22.03.2016, the Ld. Assistant Commissioner, vide the Order-in-Original No. 31 & 32/ADC/ST/ Noida/ 2016-2017 dated 23.08.2016, upheld all the allegations contained in the SCN and confirmed the demand raised in the SCN, alongwith interest and also imposed penalty.

9. On appeal filed by the Appellant dated 27.10.2016, the Ld. Commissioner (Appeals) vide the impugned Order-in-Appeal No. NOI-EXCUS-002-APP-1475-17-18 dated 15.12.2017, upheld the demand as well as penalty. Being aggrieved, the Appellant has filed the present appeal before the Tribunal.

10. Heard both the sides and perused the appeal records.

11. We find that in the present case, the only dispute is whether the CENVAT Credit, availed on the input services used exclusively in the manufacture of the dutiable goods, was required to be included in the numerator for apportioning the common credit between the exempted service (trading) and dutiable goods.

12. This issue is no more *res integra* as it has been held that the CENVAT Credit, which pertains to input services exclusively used in dutiable goods, is not required to be included in the "total CENVAT Credit" for apportionment between exempted services and dutiable goods. It has been held that for apportionment of CENVAT Credit, only such credit which was availed on input service used commonly in exempted service and dutiable goods has to be taken into consideration. For this purpose reliance has been placed on the following decisions:

(a) <u>E-CONNECT SOLUTIONS (P) LTD. Versus COMMR. OF C. EX. & CGST, UDAIPUR 2021 (376) E.L.T. 678 (Tri. - Del.)</u>

17. ***The dispute in the appeal is regarding the interpretation of the term total Cenvat credit provided in the formula in Rule 6(3A)(b)(ii).***

According to the Department, the total Cenvat credit should include even those services used exclusively in taxable services, including the common service while according to the appellant it should include only common input services and services used in exempted services and not the services used exclusively in rendering taxable output service.

18. It would be clear from a conjoint reading of sub-rules 6(1), (2) and (3) of Rule 6 that the total Cenvat credit for the purpose of formula under Rule 6(3A) is ***only total Cenvat credit of common input service and cannot include Cenvat credit on input service exclusively used for the manufacture of dutiable goods***.

19. This position is also clear from the underlying object of the amendment made in Rule 6(3A) of the Rules by Notification dated March 1, 2016, ***to consider only common input services and not total input service credit, for the purpose of computing the amount of reversal***.

20. Such amendment was also clarified by the Tax Research Unit Circular dated February 29, 2016 to apply retrospectively inasmuch as the clarification clearly mentions that the provisions of Rule 6 providing for reversal of credit in respect of input services used in exempted services, is being redrafted with the objective to simplify and rationalize the same without altering the established principles of reversal of such credit. It has been further clarified at paragraph (iv) of the Circular that the purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted services and under no circumstances this part can be greater than the whole credit.

(b) Commissioner v. Reliance Industries Ltd. — 2019 (28) G.S.T.L. 96 (Tribunal)

"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."

(c) M/s. ThyssenKrupp Industries India Pvt. Ltd. Vs. Commissioner of CE & ST, Pune-I [FINAL ORDER NO. A/85557-85558/2023 dated 10.02.2023]

13. The above ratio has also been applied in the Appellant's own case in the following decisions:

(a) **M/S HONDA CARS INDIA LTD., V. COMMISSIONER OF CGST &CE [FINAL ORDER 40540/ 2020]**

(b) **M/S HONDA CARS INDIA LIMITED V. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, CUSTOMS AND CENTRAL EXCISE, ALWAR [FINAL ORDER 51046/2021]**

(c) **M/S HONDA CARS INDIA LTD. V. COMMISSIONER OF GST & CENTRAL EXCISE [FINAL ORDER 40717/2021]**

14. Further, it is an undisputed fact as the SCN has not disputed:

(a) that the Appellant has maintained separate records/accounts of input services which were exclusively used in the manufacture of dutiable goods;

(b) that in respect of the input services which were utilized exclusively for trading activity, no credit was availed by the Appellant.

(c) That the common credit pertained to input services used commonly in dutiable and exempted services.

15. It is observed, that the Department has raised the dispute interpreting the term "total Cenvat credit" provided in the formula under Rule 6(3A)(b)(ii) to include even that credit which pertains to those services which has been exclusively used in manufacture of dutiable goods. Such an approach by the Department is incorrect and is violative of the principles of Rule 6(1) of the C.C.R.2004. Once the identified input services have been exclusively used in manufacture of dutiable goods, then there is no requirement to reverse any portion of such credit by applying the formula of apportionment.

16. In order to bring parity with the underlying objective of Rule 6, Rule 6(3A) of the Credit Rules was amended vide **Notification No. 13/2016-CE (NT) dated 01.03.2016, effective from 01.04.2016**, by substituting Rule 6(3A) (b)(ii) of the Credit Rules, to consider only common input services and not total input service credit, for the purpose of computing the amount of reversal.

17. It is observed that such amendment in Rule 6(3A) by virtue of substitution was clarified by the Board vide **TRU Circular No. 334/8/2016-TRU dated 29.02.2016***,* to apply retrospectively. The clarification clearly mentioned that the provisions of Rule 6 providing for reversal of Credit in respect of input services used w.r.t. exempted goods/services, is being redrafted with the objective to simplify and rationalize the same without altering the established principles of reversal of such credit. It has been further clarified at **paragraph (iv)**, that the purpose of the Rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods/services

and under no circumstances this part can be greater than the whole credit.

18. Further, in the following decisions where similar proposition was laid down regarding the interpretation of the term "Total Cenvat credit" in Rule 6(3A):

- **Thyssenkrupp Industrial Solutions (India) Private Limited vs. Commissioner of Central Tax, Mumbai, 2022 (6) TMI 468 – CESTAT MUMBAI***)*
- **JWC Logistics Park Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Raigad, 2022 (5) TMI 430 – CESTAT MUMBAI**
- **Reliance Industries Limited vs. Commissioner of Central Excise & Service Tax, Raigad, 2020 (9) TMI 787 – CESTAT MUMBAI**
- **Deepak Fertilizers and Petrochemicals Corporation Ltd. vs. Commissioner of Central Excise & Service Tax, Raigad, 2020 (7) TMI 486 - CESTAT MUMBAI**
- **Lotte India Corporation Ltd. vs. Commissioner of Central Excise, 2020 (3) TMI 307-CESTAT CHENNAI**
- **EID Parry India Ltd. vs. Commissioner of Central Tax & Central Excise, Belgaum, 2019 (3) TMI 32 – CESTAT BANGALORE**
- **Molex India Pvt. Ltd. vs. Commissioner of Central Tax, Bengaluru, 2019-TIOL-3205-CESTAT-BANG**
- **IBM India Pvt. Ltd. vs. Commissioner of Central Excise, Customs & Service Tax, Bangalore, 2015-VIL-849-CESTAT-BLR-ST**
- **Commissioner of Central Excise and Service Tax, Chennai vs. Chennai Petroleum Corporation Ltd., Final Order No. 40009/2020 dated 06.01.2020**

19. Therefore, in view of the aforesaid observations, we hold that the modality adopted by the Appellant for reversal of credit on proportionate basis is in accordance with the provisions of Rule 6(3A). Hence, the impugned order by upholding the demand on incorrect understanding of provision is erroneous and not sustainable.

20. In the impugned order, the Ld. Commissioner (Appeals) has placed reliance upon an interim order passed by the Tribunal in the case of ***Thyssenkrupp Industries (I)***

Pvt. Ltd. vs. Commissioner of Commissioner of Central Excise, Pune [Appeal No. E/86112/2014-Mum], 2014 (310) E.L.T. 317 (Tri. - Mumbai), for upholding the demand against the Appellant. The Tribunal vide ***FINAL ORDER NO. A/85557-85558/2023 dated 10.02.2023 in the same appeal of M/s. ThyssenKrupp Industries India Pvt. Ltd. Vs. Commissioner of CE & ST, Pune-I*** set aside the demand.

21. In view of the above discussions, the impugned order passed by the Ld. Commissioner (Appeals) is not sustainable and is liable to be set aside.

22. Further, the extended period of limitation is not invokable. The demand of Rs. 6,19,010/- for the period from April 2010 to March 2013 is barred by limitation. Section 73(1) of the Act, in a normal case a SCN can be issued at any time within 18 months from the relevant date. In the present case, the SCN for the period April 2010 to March 2014 was issued only on 22.07.2015 which is beyond the normal period of 18 months from the relevant date. The Appellant filed the ST -3 Returns for the period 01.10.2013 to 31.03.2014 on 25.04.2014 and therefore, the said date will be the relevant date in terms of Section 73(6)(i)(a) of the Finance Act, 1994. The demand of Rs. 6,19,010/- for the period April 2010 to March 2013 is barred by limitation in as much as the SCN for the said period has been issued beyond 18 months from the relevant date.

23 To invoke proviso to Section 73(1), the conditions stated therein is required to be fulfilled, it should be proved that the Appellant had, by some positive act, suppressed the fact from the department with an intention to evade irregular Cenvat credit.

24. There is no suppression of facts in the instant case. It is observed that the Appellant periodically intimated the department about their selection of option to reverse Cenvat credit under Rule 6(3A) of CCR. They have also intimated the department about the amount of credit reversed by them.

Hence the department already had the knowledge of the said transactions. Moreover, mere fact that the dispute on eligibility of impugned credit is disputed by the department does not ipso facto mean the fact was suppressed.

25. The Appellant has been regularly submitting the ST -3 returns, it is for the department to scrutinize the same as per the stipulations contained in the CBEC Manual.

26. As regards imposition of penalty and recovery of interest, we hold that since the demand of Cenvat Credit itself is not sustainable, penalty is not imposable and consequently, no interest is also recoverable.

28. In view of the above, we hold that the impugned order is not sustainable and is accordingly set aside. Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 09.10.2024)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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