

In the High Court of Judicature at Madras

Dated: 20.06.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER
and

The Honourable Mr.JUSTICE R.SURESH KUMAR

Civil Miscellaneous Appeal No.144 of 2013

The Commissioner of Central Excise,
Chennai III Commisionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34. Appellant

Vs.

1. M/s.Same Duetz Fahr India (P) Ltd.,
No.72-M, Sipcot Industrial Complex,
Sipcot, Ranipet - 632 403.
2. Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, 1st Floor,
Shastri Bhavan Annexe, 26, Haddows Road,
Chennai - 600 006. Respondents

APPEAL filed under Section 35G of the Central Excise Act,
1944, against the order dated 11.06.2012 made in Final Order
No.634 of 2012, on the file of the Customs, Excise & Service Tax
Appellate Tribunal, Chennai.

For Appellant : Ms.R.Hemalatha

For Respondents : Ms.Cynduja Crishnan - R1
for M/s.Muthu Venkataraman

R2 : Tribunal

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. This is an appeal preferred by the Revenue against the
Judgment and Order of the Customs, Excise and Service Tax
Appellate Tribunal, dated 14.06.2012 (in short, 'the Tribunal').

2. The only issue which arises for consideration is, whether the Assessee can avail of Cenvat Credit of duty, paid on input services, in view of the fact that it manufactures goods, which, though exempt from duty are otherwise exported.

3. The captioned appeal was admitted on 29.01.2013, when, the following question of law was framed for our consideration.

" In the facts and circumstances of the case, whether an assessee manufacturing wholly exempted goods (chargeable to NIL rate of duty) is eligible to avail Cenvat Credit of duty paid on the said input services under Rule 6(1) of the Cenvat Credit Rules, 2004, used in the manufacture of such exempted goods, which are exported?"

4. The Tribunal has ruled in favour of the Assessee and in doing so, has relied upon its own judgment, rendered in: Jobelle V. CCE, Mumbai -I, 2006 (203) E.L.T. 627 (Tri -Mum).

5. The brief facts, which are required to be noticed, in order to adjudicate upon the appeal are as follows.

5.1. The Assessee is in the business of manufacturing Tractors, Tractor Engines and parts thereof. The aforementioned goods manufactured by the Assessee, fall under the following chapter sub headings 87019090, 84082020 and 87089900 of the Central Excise Tariff Act, 1985 (in short, 'the 1985 Act').

5.2. The Assessee, it appears, had availed of Cenvat Credit, amounting to Rs.72,19,504/-, as it had paid service tax on the basis of reverse charge mechanism qua services rendered by a non- resident service provider. The Assessee had paid sales commissions to the said service provider. The services rendered by the service provider were taxable under the category "Business Auxillary Service". Since, it was an input service, as indicated above, service tax was paid by the assessee qua which Cenvat credit was claimed. For the purpose of completion of record, it may be noted that the service provider was an U.S. based entity, by the name Maigold.

5.3. It is a common ground that the goods manufactured by the Assessee, i.e., tractors, for which services of the aforementioned sales commission agent were utilised, were exempted from payment of Central Excise duty, by virtue of Notification No.6/2006/CE dated 01.03.2006 (in short, 'the 2006 notification').

5.4. Counsels for the parties have indicated to us that the Assessee's goods would fall under serial No.40 of the

aforementioned notification. This notification, being an exemption notification, was issued under Section 5A of the Central Excise Act 1944, (in short, 'the 1944 Act').

5.5. The Revenue, however, took exception to the Cenvat Credit claimed by the Assessee and, accordingly, issued a show cause notice dated 29.10.2010 (in short, 'SCN'). By virtue of this SCN, the Assessee was called upon to show cause as to why input service credit, amounting to Rs.72,19,504/- ought not to be recovered with interest under Rule 14 of the Cenvat Credit Rules, 2004 (in short, 'the 2004 Rules') read with Section 11A and 11B of the 1944 Act.

5.6. Further more, the Assessee was also called upon to show cause, as to why penalty under Rule 15(3) of the 2004 Rules ought not to be imposed.

6. The Assessee, as required, filed a reply dated 29.11.2010 to the aforementioned SCN. It was, inter alia, contended by the Assessee that reliance placed on Rule 6 (1) of the 2004 rules, which, apparently, prohibited Cenvat Credit being taken qua exempted goods, had to be read along with Rule 6 (6) of the 2004 Rules.

6.1. It appears, that the adjudicating authority was not persuaded by the stand taken by the Assessee and, accordingly, proceeded to pass the Order-in-original dated 17.10.2011, whereby, the demand raised was confirmed.

6.2. Being aggrieved, the Assessee preferred an appeal with the Tribunal. The Tribunal, as indicated above, reversed the view of the adjudicating authority.

7. It is, in this background, the Revenue has preferred the captioned appeal.

8. Ms.Hemalatha, who appears on behalf of the Revenue, has submitted that the impugned judgement of the Tribunal is erroneous in law, in view of the provisions of Rule 6(1) of the 2004 Rules. Learned counsel contended that Rule 6(6) of the 2004 Rules would have no applicability, in view of the fact that, the goods manufactured by the Assessee, enjoyed exemption from Central Excise duty, even prior to their export, on account of the provisions of the 2006 notification.

9. On the other hand, Ms.Cynduja Crishnan, who appears for the Assessee, says that sub-rule (6) of Rule 6 of 2004 Rules creates an exemption to the provision of Rule 6(1). It is contended that Rule 6(6) would apply to exempted goods, as the purpose of the said provision is, to give impetus to exports by

neutralising the duties, paid on input services, so that, the goods, so exported, are competitively priced in foreign markets.

9.1. In support of her submission, learned counsel places reliance on the following judgment of the Division Bench of the Bombay High Court: *Repro India Ltd. V. Union of India* 2009 (235) E.L.T. 614 (Bom.).

10. We have heard the learned counsel for the parties and perused the record.

11. The facts, as narrated above, are not in dispute. Therefore, what is required to be analysed, in the instant case, is, as to what is import, scope and ambit of Rule 6(1) and 6(6) of the 2004 Rules.

11.1. For the sake of convenience, the relevant extracts of Rule 6 are set forth with hereafter:

"Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. - (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2)

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2).....

(3).....

(4)....

(5)....

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or

(ii).....

(iii)....

(iv)....

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi)....."

12. A plain reading of sub-rule (1) of Rule 6, would show that Cenvat Credit is not allowed, inter alia, qua such input

service, which is used in the manufacture of exempted goods, except in circumstances mentioned in sub-rule (2). Sub-rule (2) is not relevant for the purposes of this case.

12.1. In so far as sub-rule (6) of Rule 6 is concerned, it clearly states that provisions of sub-rule (1), (2), (3) and (4) shall not be applicable, in case of excisable goods, are removed without payment of duty, inter alia, under circumstance adverted to in clause (v). In other words, in a situation where goods are cleared for export, under bond, in terms of the provisions of the Central Excise Rules, 2002.

12.2. There is no dispute that, in the instant case, as indicated above, the Assessee's goods were cleared for export, albeit under bond.

12.3. Therefore, the question, which arises is, would sub-rule (6) of Rule (6) of the 2004 Rules, would trump in the instant case, the provisions of sub-rule (1) of Rule 6.

13. It is no one's case that the goods manufactured by the Assessee were not excisable. Though the goods were excisable, the only reason, that Central Excise duty was not paid or was not payable, was, on account of the provisions of the 2006 notification. Therefore, upon executing the bond, the Assessee removed what were otherwise excisable goods without payment of duty.

13.1. One of the exceptions to sub-rule (1) of Rule 6 is a circumstance, where excisable goods are exported pursuant to the execution of bond, in terms of Central Excise Rules 2002.

14. Therefore, on a plain reading, we see no difficulty in the Assessee's case falling in the exception carved out in Rule 6(6)(v) of the 2004 Rules. The purpose, apparently, behind carving out of such exceptions appears to be, to neutralise the impact of the duties paid by the exporters, with regard to input tax, whether paid on goods or services. The objective, obviously, is not to export duties, so as to provide much needed competitive edge to Indian exporter in foreign markets.

14.1. India is a party to the WTO regime and, therefore, it is permissible for it to neutralise duties on inputs, whether in the form of goods or services.

15. Thus, having regard to the Rules, qua which we have rendered our view above, and the perceptible object as to why sub-rule (6) of Rule 6 of the 2004 Rules has been put in place, we are not inclined to interfere with the impugned judgment rendered by the Tribunal.

16. Accordingly, the appeal of the Revenue is dismissed. The question of law, as framed, is answered in favour of the Assessee and against the Revenue. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. M/s.Same Duetz Fahr India (P) Ltd.,
No.72-M, Sipcot Industrial Complex,
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 2. Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, 1st Floor,
Shastri Bhavan Annexe, 26, Haddows Road,
Chennai - 600 006.
 3. The Section Officer,
VR Section, High Court, Madras.
- +1cc to Mr.R.Hemalatha, Advocate SR.No.43256
+1cc to M/s.Mohamed shaffio, Advocate SR.No.43936

NRI (CO)
GN(10/07/2017)

C.M.A.No.144 of 2013

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