

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.41463 of 2014

(Arising out of Order in Appeal No. 65/2014 dated 2.4.2014 passed by the Commissioner (Appeals), LTU, Chennai)

Alstom T & D India Ltd.

No. 19/1, GST Road
Pallavaram, Chennai – 600 043.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

Respondent

APPEARANCE:

Shri Joseph Prabhakar, Advocate for the Appellant
Shri N. Satyanarayanan, AC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri K. Anpazhakan, Member (Technical)

Final Order No. 40108/2024

Date of Hearing : 31.01.2024
Date of Decision: 01.02.2024

Per K. Anpazhakan,

The present appeal has been filed against the impugned Order in Appeal No. 65/2014 dated 2.4.2014 passed by the Commissioner (Appeals), LTU, Chennai wherein the learned Commissioner (Appeals) has upheld the demand confirmed in the Order in Original and rejected the appeal filed by the appellant. Aggrieved against the impugned order, the appellant has filed this appeal before this Tribunal.

2. Briefly stated facts of the case are that the appellant is registered for payment for service tax and are availing CENVAT credit on duty / service tax paid on common input / input services used in the provision

of output service. The appellant has rendered works contract services at Chennai Airport during the year 2009, 2010 and 2011 which are fully exempt from payment of service tax as per the definition under sec. 65(105)(zzzza) of the Finance Act, 1994. As the appellant has availed CENVAT credit on common input services which were used for providing both taxable as well as exempted services, they have to pay an amount equal to 6% of the value of the exempted services as per the provisions of Rule 6(3)(1) of the CENVAT Credit Rules, 2004. As the appellant has not paid the 6% of the value of the exempted services, Show Cause Notice was issued and after due process, the demands were confirmed in the OO and on appeal, the demands confirmed were upheld in the impugned order.

3. In the grounds of appeal, the appellant submits that the works contract services rendered by them to Chennai Airport are specifically excluded from the definition under section 65(105)(zzzza) of the Finance Act, 1994. Accordingly, they submit that the provisions of Rule 6(3) of the CENVAT Credit Rules, 2004 are not applicable to the present case. The appellant further submits that they have already paid an amount of Rs.42,81,673/- equal to 6% of the value of exempted services on 28.2.2013. They further submit that there was no intention to evade payment of tax and accordingly no penalty is imposable in this case under Rule 15 of the CENVAT Credit Rules, 2004 r/w section 78 of the Finance Act, 1994.

4. The learned AR Shri N. Satyanarayanan reiterated the findings in the impugned order.

5. Heard both the parties and perused the appeal documents.

6. We find that the issue involved in the present appeal is related to reversal of CENVAT credit attributed to common input services used in taxable and exempted services. It is a fact on record that the appellant has rendered works contract service to Chennai Airport which are specifically excluded from the levy of service tax as provided under clause (zzzza) of Section 65(105) of the Finance Act, 1994. The appellant tried to make a distinction between exempted services and services which are excluded from the payment of service tax and argued that the provisions of Rule 6(3) of CENVAT Credit Rules, 2004 are not applicable in the present case on hand.

7. We find that the argument of the appellant is not acceptable. The definition of 'exempted services' as defined under Rule 2(e) of CENVAT Credit Rules, 2004 is reproduced below:-

"exempted services' means taxable services which are exempt from the whole of the service tax leviable thereon and includes services on which no service tax is leviable under section 66 of the Finance Act, 1994"

From the above definition, it is very clear that exempted services would also include services on which no service tax is leviable under the Act. Since no service tax is leviable on the works contract service rendered by the appellant to Chennai Airport project, these services have been rightly considered as exempted services by the authorities below. Thus, we find that the demand has been rightly confirmed in the impugned order. Accordingly, we uphold the demand of Rs.42,81,673/- being equal to 6% of the value of the exempted services confirmed in the impugned order along with interest.

8. Regarding penalty imposed under Rule 15 of the CENVAT Credit Rules, 2004 r/w section 78 of the Finance Act, 1994, we find that the

appellant has already paid an amount of Rs.42,81,673/- on 28.2.2013. We find that there is no evidence brought on record to establish suppression of facts with an intention to evade payment of the tax. Accordingly, we find that this is a fit case for invocation of provisions of section 80 of the Finance Act, 1994 to waive the penalty imposed.

9. In view of the above discussion, we set aside the penalty of Rs.42,81,673/- imposed under Rule 15 of the CENVAT Credit Rules, 2004 r/w section 78 of the Finance Act, 1994, by invoking the provisions of section 80 of the Finance Act, 1994.

10. In view of the foregoing discussion, we uphold the demand confirmed along with interest in the impugned order and set aside the penalty imposed under Rule 15 of the CENVAT Credit Rules, 2004 r/w section 78 of the Finance Act, 1994. Appeals is disposed of accordingly.

(Pronounced in open court on 01.02.2024)

(K. ANPAZHAKAN)
Member (Technical)

(P. DINESHA)
Member (Judicial)