

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11147 of 2014-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-COM-140-13-14 dated 29.11.2013 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Commissioner of Central Excise & ST, Rajkot Appellant

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat-360001

VERSUS

Galaxy Diesel & Electricals

.... Respondent

Dwarkadhish Building, Tagore Road,
Near Virani Chowk, RAJKOT, GUJARAT .

APPEARANCE :

Shri Prabhat K. Rameshwaram, Addl. Commissioner for the Appellant-Revenue
None for the Respondent-Assessee

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 08.06.2023

DATE OF DECISION: 19.06.2023

FINAL ORDER NO. 11280/2023

RAMESH NAIR :

This appeal is filed by the Revenue against the adjudication order passed by Commissioner, Central Excise Rajkot. As per the grounds of appeal even though the respondent had paid back the full amount attributed to exempted service along with interest, they are liable to pay 8%/6%/5% of the value of exempted service for the reason that respondent have not maintained separate accounts.

2. Shri Prabhat K. Rameshwaram, learned Addl. Commissioner (AR) appearing on behalf of the Revenue submits that since the respondent have not maintained separate account in respect of input service used for exempted goods, there is no option except to pay the amount at the rate of 8%/6%/5% in terms of Rule 6(3) of Cenvat Credit Rules, 2004. He also

placed reliance on the Bombay High Court judgment in the case of *CCE, Thane-1 vs. Nicholas Piramal (India) Limited – 2009 (244) ELT 321 (Bom.)*.

3. None appeared on behalf of the respondent.

4. We have carefully considered the submissions made by learned AR and perused the record. We find that the Revenue's case is that even though the respondent have admittedly paid back the entire Cenvat credit availed along with interest which was partly attributed to exempted service even then the respondent is liable to pay 8%/6%/5% amount of value of exempted services in terms of Rule 6(3) of Cenvat Credit Rules, 2004. We find that on this issue much water has been flown and in various cases, the Courts and Tribunal held that once the Cenvat credit of the common inputs used in relation to exempted service is reversed along with interest, the demand of 8%/6%/5% in terms of Rule 6(3) will not sustain. The Commissioner has also taken support from one of the land mark judgment in the case of *Chandrapur Magnet Wires Pvt. Limited vs. CCE, Nagpur – 1996 (81) ELT 3 (SC)* wherein it was held that even though the modvat credit was availed but subsequently the same is reversed along with interest situation become as if no Cenvat credit is availed. Accordingly the benefit of notification was extended. Some of the judgments wherein the similar issue has been decided in favour of the respondent are cited below:-

(a) Mercedes Benz India (P) Limited vs. CCE Pune-1 – 2015 (40) STR 381 (Tri. Mum.)

(b) Hello Minerals Water (P) Limited vs. UOI – 2004 (174) ELT 422 (All.)

(c) Kundan Cars Pvt. Limited vs. CCE, Pune - 2016 (43) S.T.R. 630 (Tri. - Mumbai)

(d) Bombay Minerals Limited vs. CCE & ST, Rajkot - 2019 (29) GSTL 361 (Tri. - Ahmd.)

5. As regards the judgments relied by learned AR, we find that the judgment has been subsequently distinguished, therefore, the same is not applicable.

6. In view of the discussions made hereinabove and the judgments cited, the demand of 8%/6%/5% cannot be made in the facts of the present case when the respondent has admittedly paid back the entire Cenvat credit along with interest which was partly attributed to exempted service. Therefore, the demand is not sustainable. Hence the impugned order is upheld and the Revenue's appeal is dismissed.

(Pronounced in the open court on 19.06.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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