

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

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.42448 of 2016

[Arising out of Order-in-Appeal No.CHN-SVTAX-000-APP-545-16-STA dated
01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

M/s.Popular Vehicles and Services Pvt. Ltd.

Appellant

(Formerly Popular Vehicles and Services Ltd.)
No.1402/2A, 200 Feet Ring Road,
Retteri Junction, Kolathur, Chennai
600 099.

Vs

The Commissioner of GST & Central Excise

Respondent

Chennai Outer Commissionerate,
No.2045-I, Newry Towers, 2nd
Avenue, Anna Nagar, Chennai
600 040.

APPEARANCE:

Shri T.R. Ramesh, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 21.07.2022
Date of Pronouncement: 10.08.2022

FINAL ORDER No. 40288 / 2022

Brief facts of the case are that the appellants are engaged in providing service of Authorized Service Station and are also engaged in trading of spares and accessories of Maruti brand cars. They have obtained service tax registration from the Service Tax Commissionerate, Chennai. During verification of accounts, it was noticed that the appellant is availing cenvat credit of service tax paid on various services such as telephone, security service, advertisement, man power supply, maintenance and repair services. These services are common input services for both taxable services as well as trading of goods. However, trading of goods is an exempted service w.e.f. 01.04.2011. As per Rule 6 (3) of Cenvat Credit Rules, 2004, the appellant is required to pay an amount equal to 6% of value exempted services or pay an amount under Rule 6(3A) for the period from April 2011 onwards. The appellant had not reversed the credit or paid the above said amount determined in terms of Rule 6 (3) of CCR 2004. Show cause notice dated 04.04.2013 was issued for the period October 2010 to March 2011 proposing to demand cenvat credit wrongly taken and utilized by them during the said period. In the very same notice, the appellant was called upon to show cause why an amount of Rs.14,467/- being short paid service tax for the period October 2010 to March 2012 should not be demanded under Section 73 (1) of Finance Act, 1994. After due process of law, the original authority confirmed the demand in respect of wrongly availed credit as well as the demand

of service tax. Against such order, the appellant filed appeal before Commissioner (Appeals) who upheld the order passed by the adjudicating authority. Hence this appeal.

2. On behalf of the appellant, Ld. Counsel Shri T.R. Ramesh appeared and argued the matter. He explained that w.e.f. 01.04.2011, trading has been brought within the ambit of 'exempted service' under Rule 2(e) of CCR 2004. Though the period involved in the present case is prior to 01.04.2011, the Hon'ble High Court of Madras in the case of *Ruchika Global Interlinks - 2017 (5) G.S.T.L. 225 (Mad.)* has held that trading activity has to be considered as exempted service both before and after the amendment.

3. He submitted that the appellant is contesting the case on the ground of limitation. The demand in respect of cenvat credit has been raised after the period of one year. The issue whether trading can be considered as an exempted service or not prior to 01.04.2011 was under litigation and there were decisions in favour of the assessee as well as against them. In the case of *Kundan Cars Pvt. Ltd. Vs CCE Pune - 2016 (43) S.T.R. 630 (Tri.-Mumbai)*, it was held that when the dispute is under litigation and it is interpretational in nature, the demand raised invoking the extended period alleging fraud, collusion and suppression of facts cannot sustain. The Ld. Counsel adverted to the SCN and submitted that the department has not been able to establish any fraud, collusion or suppression of facts on the part of the appellant. The appellant was under *bona fide* belief that prior to the amendment, trading cannot be considered as an exempted service. He

also relied upon the decision in the case of *BHEL Vs CC, C.EX & ST Medchal* - 2020 (43) G.S.T.L. 395 (Tri.-Hyd.). He prayed that the demand being time-barred may be set aside.

4. Ld. Counsel submitted that with regard to the issue of demand of service tax to the tune of Rs.14,467/-, the appellant has already paid the amount along with interest and the same has been appropriated which is noted in the order passed by the adjudicating authority. He prayed for waiver of penalty imposed.

5. Ld. A.R Shri Arul C. Durairaj supported the findings in the impugned order.

6. The Ld. Counsel for the appellant has been fair enough to submit that the issue on merits is covered against the assessee as per the decision of the Hon'ble Madras High Court in the case of *Ruchika Global Interlinks* (supra). It is the case of the appellant that the period involved is October 2010 to March 2011 and the SCN is dated 04.04.2013. From the decisions cited by the Ld. Counsel for the appellant, it can be seen that the issue whether trading can be considered as an exempted service was under litigation before various forums. There were decisions in favour of the assessee and against them. On perusal of records, there is no positive evidence adduced by the department to establish that there is fraud, collusion or suppression of facts on the part of the appellant. The issue as to whether trading is exempted service or not being interpretational in nature, I am of the view that applying the ratio of decisions cited by the Ld. Counsel, the invocation of extended period cannot sustain. I hold that the show

cause notice in regard to the demand of wrongly availed cenvat credit is time-barred and requires to be set aside which I hereby do.

7. The second issue is with regard to the demand of service tax to the tune of Rs.14,467/-. It is submitted by the Ld. Counsel that the appellant has paid the amount along with interest. Taking note of the same and also for the reason that there is no evidence to show that there has been fraud, collusion or suppression of facts on the part of the appellant, I am of the view that penalty imposed cannot sustain. Penalty imposed in this regard is set aside without disturbing the demand of service tax along with interest.

8. The impugned order is modified to the extent of setting aside the demand alleging wrongly availed cenvat credit and also setting aside penalty in respect of the demand of service tax to the tune of Rs.14,467/-. Appeal is partly allowed in above terms with consequential relief, if any, as per law.

(Pronounced in court on 10.08.2022)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**