CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88091 OF 2017

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/334-335/17-18 dated 25th September 2017 passed by the Commissioner of Central Excise & GST (Appeals), Nagpur.]

Tirupati Urban Co-Operative Bank Ltd
172 Shraddhanandpeth, South Ambazari Road
Nagpur - 440010 ***…Appellant***

versus

Commissioner of Customs, Central Excise & Service Tax
Nagpur – II
GST Bhawan, Telangkhedi Road, Civil Lines
Nagpur - 440001 ***…Respondent***

APPEARANCE:

Shri Shailendra Jain, Chartered Accountant for the appellant

Shri Nitin Ranjan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85825 /2022

DATE OF HEARING: 21/03/2022
DATE OF DECISION: 01/09/2022

PER: C J MATHEW

M/s Tirupati Co-op Bank Ltd, a provider of 'banking and other financial services', is in appeal against the confirmation of short-paid

tax of ₹3,15,054 for 2005-06 to 2007-08, recovery of ₹1,92,22,737 (subject to variation on re-computation for the period from July 2009 to March 2010) for 2008-09 to 2009-10 and of ₹1,16,17,624 for 2010-11 under section 73 of Finance Act, 1994, along with applicable interest, and penalties imposed under section 78 of Finance Act, 1994 as upheld in order-in-appeal no. NGP/EXCUS/000/APPL/334-335/17-18 dated 25th September 2017 of Commissioner of GST & Central Excise (Appeals), Nagpur. The dispute pertains to availment of CENVAT credit on ‘inputs’ and ‘input services' used in common for both taxable and exempted services rendered by the appellant herein and is centred around receipt of ‘interest’ in the course of rendering service that is not liable to tax. Taking of credit by the appellant, under the authority of rule 3 of CENVAT Credit Rules, 2004, is not in controversy and it is only the continued retention of credit upon utilization, in alleged breach of rule 6 of CENVAT Credit Rules, 2004, that is.

2. Two show cause notices were adjudicated upon by the original authority and the impugned order has dealt with both. During the period of dispute, rule 6 of CENVAT Credit Rules, 2004, prescribing separate accounts of utilization of ‘inputs’ and ‘input services’ and, in absence thereof, either reversal of credit attributable to use in providing ‘exempted’ service or payment at prescribed rate on the total value of ‘exempted service’ had undergone change for the period

after 1st April 2008 when the compliance involved utilizing only twenty percent of total tax to be discharged through the CENVAT credit route was substituted. According to tax authorities, the exemption of 'interest' and 'discount of cash credit, overdraft, bill discounting facilities etc.' in terms of notification no. 29/2004-ST dated 22nd September 2004 precluded the availment of credit to the extent utilized in rendering these services as provider of 'banking and other financial services' taxable under section 65 (105) (zm) of Finance Act, 1994.

3. It was held by the lower authorities that, in 2005-06, 2006-07 and 2007-08, the appellant had utilized ₹1,55,737, ₹1,93,592 and₹3,66,295respectively to pay tax of ₹4,38,069, ₹6,62,222 and ₹9,02,560 respectively while it should have been restricted to ₹87,614, ₹1,32,444 and ₹1,80,512 respectively and thereby liable to be subjected to recovery of ₹68,123, ₹61,148 and ₹1,85,783 respectively. For the period thereafter, the recovery of ₹1,16,06,248 and ₹76,16,489 at 8% of value of exempted service of ₹14,50,78,106for 2008-09 and ₹9,52,06,119for 2009-10 and ₹1,16,17,624 at 6% of value of exempted service of ₹19,36,27,064 was ordered.

4. According to Learned Chartered Accountant, appearing for the appellant, it is only by notification no. 11/2012-Service Tax dated 17th March 2012 that 'interest' could be treated as 'exempted' as, till then,

'interest on loans' were merely excluded from the computation of value of taxable service in terms of rule 6(2)(iv) of Service Tax (Determination of Value) Rules, 2006. Reliance is placed on the decision of the Tribunal in *Bhingar Urban Co-op Bank Ltd v. Commissioner of Central Excise, Customs & Service Tax [(2016) 041 STR 0673]*. The invoking of the extended period was questioned for not being in consonance with the decision of the Tribunal in *Jaika Automobiles Pvt Ltd v. Commissioner of Central Excise & Service Tax, Raipur [final order no. 58327/2017 dated 14th September 2017 disposing of appeal no. ST/50665/2017 against order-in-appeal no. BHO-EXCUS-002-APP-308-16-17 dated 21st December 2016 of Commissioner of Central Excise, Customs & Service Tax (Appeals), Raipur]* and in *Aditya College of Competitive Exam v. Commissioner of Central Excise, Visakhapatnam [2009 (16) STR 154 (Tri-Bang)]*. The decision of the Tribunal in *Sudhakar Plastic Ltd v. Commissioner of Central Excise, Hyderabad [2010 (20) STR 792 (Tri-Bang)]* was relied upon to dispute the scope for imposition of penalties under section 76 and section 78 of Finance Act, 1994 for availment of CENVAT credit.

5. Learned Authorized Representative contended that the appellant had not maintained separate accounts on consumption of services for taxable and exempted 'output services' and rule 6 of CENVAT Credit Rules, 2004 necessitated the recovery ordered by the lower

authorities.

6. On perusal of the impugned order, we find that the entire proceedings is founded upon 'interest' being consideration for rendering of 'exempted service' and that the only option available to the appellant was to be charged the appropriate percentage on the value of such 'exempted service' during 2008-09, 2009-10 and 2010-11. In *re Bhingar Urban Co-op Bank Ltd*, it has been held that

> *'6. As regard the submission of ld. Counsel on the issue whether the interest earned by the bank on loans and advances, whether it is exempted service or taxable service, I read Board Circular DOF No. 334/1/2012/TRU, dated 16 March, 2012 and the relevant paras are reproduced below :*
>
> > *Point 20. Rule 6 of Valuation Rules prescribed inclusions and exclusions to the taxable value. Following changes are being made here -*
> >
> > *i.* ---------
> >
> > *ii. In sub-rule (2) clause (iv) regarding exclusion of 'interest on loans' is proposed for substitution with "interest on (a) deposits; and (b) delayed payment of any consideration for the provisions made (service/goods)". This will keep such amounts outside the value and thus not be relevant for reversal of credit under Rule 6(3) of Cenvat Credit Rules, 2004. Interest on loans will now be an exempt income rather than an exclusion from value."*
> >
> > *iii.* --------
> >
> > *Point 26. "Interest on loans, advances will now be an exempt service. This will require reversal of credit used for earning such income. For the banking and financial sector, provisions are available to reverse credit up to 50% in Rule 6(3D). It is being proposed to change this formula to actual basis, the value of service being net interest earned less interest paid on deposits, subject to a minimum of 50% of interest paid on deposits. For the non-financial sector it is being proposed that they may reverse credits on gross interest basis."*

From the above clarification and I also read amendment Notification No. 11/2012-S.T., dated 17-3-2012, interest, prior to 17-3-3012 was excluded from the taxable value and thereafter it was explicitly made exempted. Therefore the Board has clarified that after 17-3-2012 the interest of bank loan become exempted and Rule 6(3) was applied. However the Board has clarified that prior to 17-3-2012 the value of interest was not be relevant for the reversal of credit under Rule 6(3) of Cenvat Credit Rules. Moreover for the banking and financial institution under Rule 6(3)(D) the provision was available for straight 50% reversal of interest. In the present case the disputed value is of interest and Cenvat credit up to 50% of credit was required to be reversed. However the appellant admittedly paid the entire Service Tax credit availed by them during the 2008-09 along with interest @ 24% (18% + 6% subsequently) therefore even in view of provisions under Rule 6(3), the appellant could not be asked to pay 8% of the interest amount in terms of Rule 6(3)(ii). I found that during the period involved 2008-09, apart from provisions of Rule 6(3)(i) another option under Rule 6(3)(ii) was available to the appellant according to which the appellant was under obligation to pay an amount equal to Cenvat credit attributable to exempted service subject to certain condition and procedure. I find that appellant has paid entire Service Tax credit along with interest, therefore procedure as prescribed under sub-rule (3A) of Rule 6 is not relevant for the reason that the said procedure is relevant only when the appellant undertake to pay proportionate credit attributable to the exempted service. Therefore in my considered view the appellant, since paid entire Service Tax along with interest under Rule 6(3)(ii), appellant could not be asked to pay any further additional amount. I also find that there were nationwide cases against many assessees on this issue and it was observed that as against petty amount of

Cenvat credit huge amount of lacs and crores were demanded from the assessee invoking provisions of Rule 6(3). After realizing serious anomaly in the provisions the Government brought retrospective amendment in Rule 57CC of Central Excise Rules, 1944 and Rule 6 of Cenvat Credit Rules, 2002/2004. According to said retrospective amendment in all such cases option was given to the assessee that if the assessee opt for payment of an amount of Cenvat credit attributable to the exempted goods/services along with interest @ 24% all the proceedings shall stand concluded and no further demand shall be made. In the present case appellant not only paid the amount required under the retrospective amendment but they paid entire Cenvat credit and also paid 24% interest. As regard the procedure prescribed under retrospective amendment provisions, I am of the view that substantial requirement of the amendment is that assessee should pay an amount of Cenvat credit attributable to the exempted services along with 24% interest. Procedure such an application to the Commissioner, is only for the purpose of intimating to the Commissioner regarding the payment. The department has to only ensure the calculation of such credit and payment thereof along with 24% interest. No any further disposal was required at the department's end. Since the appellant discharged the payment of entire services tax credit along with 24% interest their case is squarely covered by the provisions of Retrospective amendment of Rule 6 made under Finance Act, 2010. As regard, reliance placed by the ld. AR in case of Nicholas Piramal (supra) of Hon'ble Bombay High Court, I am of the view that judgment was given during the previous period when neither option was available under Rule 6(3)(i) nor retrospective amendment of Finance Act, 2010 were considered. Moreover the fact of this case that so called exempted service i.e. interest on loans and advances was not

exempted services during the relevant period is also altogether different facts in the present case. For this reason also Hon'ble Bombay High Court judgment in the case of Nicholas Piramal (supra) is not applicable in the present case, hence distinguished. In view of my above discussion, I am of the view that demand raised under Rule 6(3)(i), CCR, 2004 is not sustainable. Therefore the impugned order is set aside. Appeal is allowed.'

7. It would, therefore, appear that the lower authorities had not considered the manner in which the reversal was to be handled as per rule 6 of CENVAT Credit Rules, 2004 and that 'exempted services', as defined in rule 2 of CENVAT Credit Rules, 2004, should have been the basis for determining the ineligibility for continued maintenance of the credit availed.

8. In the absence of details of credit taken during the disputed period and utilized, we are unable to come to conclusion of the reversal, if any, required under the CENVAT Credit Rules, 2004. It would, therefore, be appropriate for the notice to be decided afresh by the original authority. To enable such exercise, we set aside the impugned order and remand the matter back to the original authority to consider the submissions of the assessee in the light of judicial decisions and facts relating to availment of credit.

(Order pronounced in the open court on 01/09/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*