Central Excise & Service Tax: Declaration for proportionate reversal of credit is procedural only: CESTAT

The appellant provides taxable as well as exempted services and avails input service credit on common input services used in providing output services. During the period April -September 2008, the value of the exempted services provided by the appellants is Rs.20, 31, 62,113/-.

A SCN was issued to the appellants proposing to recover an amount equal to 8% of the value of exempted services i.e. Rs.1,62,52,969/- under Rule 6(3)(i) of the CCR, 2004, since the appellants had not filed a declaration under Rule 6(3A) of the CCR, 2004 before exercising the option under Rule 6(3)(ii). The show cause notice alleged that Rule 6(3)(ii) provides for requirement of filing declaration under Rule 6(3A) which is mandatory in nature and this option would not be available, if the declaration is filed belatedly. Inasmuch as exercising the option belatedly amounts to not exercising the option at all, the SCN alleged.

The provisions of CCR, 2004, referred are as below –

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 x x x.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely :-

(i) The manufacturer of goods shall pay an amount equal to five per cent of value of the exempted goods and the provider of output service shall pay an amount equal to six percent of value of the exempted services; or

(ii) The manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

The *CCE, Pune-I* confirmed the demand of Rs.1,62,52,969/- and appropriated the amount of Rs.5,06,736/- already paid. Interest was also demanded on the said amount and Rs.21,658/- already paid was adjusted. However, penalty u/s 78 was waived.

The appellant is before the CESTAT and submits that for *minor procedural irregularities, the substantive benefit cannot be taken away under the CCR, 2004.* Revenue too is in appeal against the portion of the order not favourable to them.

The Bench after considering the elaborate submissions *inter alia* observed –

+ It is evident (*from the clauses of rule 6(3A) of CCR, 2004*) that the condition of filing the declaration is only directory and not mandatory. Further, most of the requirements under Rule 6(3A) like, name, address and registration no. of the assessee, description of taxable services and exempted services, CENVAT Credit of inputs and input services lying in balance as on the date of exercising option, are already available in the records of the Revenue. We further find it is an admitted fact that the assessee here in have calculated the CENVAT Credit in terms of clause (c) read with clause (h) and have deposited the amount so determined, by 30th June in the succeeding financial year as prescribed.

+ We, therefore, hold that although the Commissioner is in error in holding the appellant is liable to pay duty/tax in terms of Rule 6(3)(i).

+ It is further observed that there is no dispute with regard to the CENVAT Credit reworked by the assessee which is attributable to the exempted output services. Further, there is merit in the contention of the assessee that Rule 6 cannot be used as tool of oppression to extract the amount which is much beyond the remedial measure and what cannot be collected directly, cannot be collected indirectly, as well.

+ We hold that in case of substantive compliance made by the assessee i.e. calculation of the amount of CENVAT Credit reversible on annual basis and payment of the amount before the prescribed date, the substantial benefit cannot be denied. We also hold that in the garb of Rule 6, the provisions of Section 93 of the Finance Act, 1994 cannot be overridden and/or the exemption provided under the Section 93 of the Finance Act, 1994 cannot be negated by the Cenvat Credit Rules, which is a delegated legislation and subservient to the main Act.

The appeal of the assesse was allowed with consequential relief and that of Revenue was dismissed.