

Ex. Appeal Nos.50849 & 50868 of 2018-SM

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing: 30.05.2018

Date of pronouncement: 01.06.2018

Ex. Appeal Nos.50849 & 50868 of 2018-SM  
(Arising out of order-in-appeal No. 15, 14(AG)/CE/JDR/2017 dated 21.12.2017  
passed by the Commissioner (Audit) Central Excise &CGST, Jodhpur).

M/s Sanwariya Tiles Pvt. Ltd. Appellant  
M/s Rajaram Marbles & Granites Pvt. Ltd.

Vs.

CEC&CGST, Jodhpur Respondent

Appearance:

Ms. Asmita Nayak, Advocate for the appellant  
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order Nos. 52101 – 52102/2018

Per: **Archana Wadhwa**:

Both the appeals are being disposed of by a common order as the issue involved in both of them is identical

2. As per facts on record, the appellants are engaged in the manufacture of marble slabs out of the imported marble slabs. During the period prior to February, 2015, they were availing the benefit of small scale exemption Notification. The exemption limit of value of clearances was crossed by them in February, 2015 and as such in terms of provisions of rule 3(2) of Cenvat Credit Rules, 2004, they became entitled to avail cenvat credit of duty paid on

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the inputs lying in stock or in process or inputs contained in the final product lying in stock. There is no dispute about the said fact.

3. Accordingly, the appellant availed the credit of the inputs lying in stock, either as such or as contained in their final product on the date of crossing of their exemption limit. The said credit was availed on the basis of bills of entry vide which the raw material was imported by them. However, by the time the appellant crossed the exemption limit and started working under the cenvat scheme, the said bills of entry was more than six months old.

Revenue entertained a view that inasmuch as Rule 4(1) allowed availment of credit only within a period of six months from the date of issuance of the documents, the appellants were not entitled to avail the credit on the basis of more than six months old bills of entry. Accordingly, proceedings were initiated resulting in denial of credit to the appellant. The order of the original adjudicating authority was upheld by Commissioner (Appeals).

Hence, the present appeals.

4. The appellate authority, while rejecting the assessee's appeal observed as under:-

*“6. The basic defence of appellant is that both sub rules cannot be applied simultaneously and they are entitled for availment of credit in view of rule 3(2) of the Cenvat Credit Rules, 2004. However, I observe that from the wording of above two rules, there is nothing to suggest that both these rules cannot be applied simultaneously. I observe that while Rule 3(2) prescribes the eligibility to avail cenvat credit as soon as the unit crosses threshold limit, Rule 4(1) prescribes particular condition for availment of that credit. If, a condition under Rule 4 specifically disallows cenvat credit on a particular goods or service, the cenvat credit cannot be allowed under Rule 3 of the Cenvat Credit Rules, 2004.*

*7. I find that the case laws quoted by the appellant are not relevant in the present case. These case laws are applicable when there are two*

*beneficial legislations and assessee can avail either of them. In this case, as held above both rules can be applied simultaneously”.*

5. After hearing both the sides, I find that there is no dispute about the appellant's entitlement to avail the credit of the inputs lying in stock as on the date of their crossing the exemption limit, in terms of Rule 3(2) of the Cenvat Credit Rules, 2004. There is also no dispute about the quantum of inputs lying in stock, either as such or as contained in final product lying in stock. The only objection of the Revenue is in terms of Rule 4(1) of the Cenvat Credit Rules which permits availment of credit within a period of six months from the date of issuance of the document.

6. If the said objection of the Revenue is upheld, an assessee crossing the exemption limit on a particular date, would not be able to avail the credit, thus making the provisions of Rule 3(2), as infructuous. Admittedly, the appellants were not in a position to avail the credit immediately on receipt of the goods or within a period of six months from the issuance of bills of entry, as long as they were working under the small scale exemption notification. Their right to avail the credit would arise only on crossing the exemption limit. Such right specifically stands extended to them by the provisions of Rule 3(2) of the Cenvat Credit Rules and cannot be extinguished by making reference to Rule 4(1). Rule 4(1) which provide for availment of credit within a period of six months from the relevant document applies whether an assessee is already working under the cenvat credit scheme and is availing the cenvat on regular basis. A harmonious interpretation of both the rules leads to the above conclusion. By referring to one provision of law, the other provision cannot be

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made *otiose*, as per the settled principle of interpretation. It is not the appellant's fault that they crossed the exemption limit after the period of six months from the date of receipt of the inputs. It is also well settled principle of interpretation that a particular provision of law should not be interpreted in a manner so as to render the other provision as inapplicable or ineffective. Substantive right provided under the law cannot be denied by referring to other provision, if such substantive right is otherwise available to an assessee.

7. In such a scenario, by adopting the principles of harmonious construction and interpretation of rule, I hold that the appellant right to avail the credit at the time of coming out of the exemption scheme cannot be curtailed down by adopting Rule 4(1) of the Cenvat Credit Rules. Accordingly, I set aside the impugned orders and allow both the appeals with consequential relief.

( Pronounced on 01.06.2018).

(Archana Wadhwa)  
Member (Judicial)

Pant