CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.
PRINCIPAL BENCH – COURT NO.II

Service Tax Misc. Application No.50407 of 2021 (on behalf of the appellant) in
Service Tax Appeal No.50052 of 2020

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-075 dated 19.09.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Central Excise and Customs, Raipur]

M/s.Deify Infrastructures Limited **Appellant**
C/o Jayaswal Neco Industries Limited,
Siltara Growth Centre,
Raipur (CG) 492 001.

Versus

Commissioner of Central Tax, Central Excise & Customs, **Respondent**
Central GST Building, Tikrapara,
Raipur (CG) 492 001.

APPEARANCE:

Shri K.M. Menon with Ms. Parul Sachdeva, Advocates for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent/Department.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No..51927/2021

DATE OF HEARING/DECISION:27.10.2021

ANIL CHOUDHARY:

The dispute in this appeal is – whether the value of goods, deemed to be supplied in execution of works contract, are to be treated as trading simplicitor, for calculation of amount for reversal (of proportionate credit), as per Rule 6(3)(ii) of Cenvat Credit Rules.

2. Brief facts of the case is that the appellant, having Service Tax Registration No.AAACN4276CSD002, are service providers of works contract service and Business Auxiliary Service. They also undertake trading of various items such as coal, iron ore, iron ore fines, pellets, etc. apart from supply of fabrication and construction material and engineering

equipments, under proper sales invoices. The appellant also avails cenvat credit of service tax paid on input services including common input services such as practicing CA services, Credit rating agency services, GTA services, Man Power Supply Services, Banking Services, insurance services. They are discharging their service tax liability under reverse charge mechanism in respect of GTA Service, Manpower Supply Agency Service and Security Service.

3. In terms of an audit objection raised against the appellants vide Para 4 of the FAR NO.72/ST/14-15 dated 27.11.2014, the Superintendent, Service Tax Range-II, Raipur ascertained the inadmissible Cenvat credit availed by the appellant (from the information and data provided by the appellant pertaining to period April, 2015 to March, 2016), amounting to Rs.20,40,012/- including cess. The cenvat credit of service tax paid on common input services, is inadmissible on the basis of - ratio of the 10% value of trading goods to the total turnover or (i.e. 10% value of trading goods/exempted goods and value of taxable services), which appeared payable along with interest under Rule 6(3)(d) of Cenvat Credit Rules, 2004.

4. Accordingly, a show cause notice bearing F.No.V(ST)31/SCN-Deify Inf/RPR/2017-18/1316 dated 25.07.2018 was issued to the appellant, demanding an amount of Rs.20,40,012/- in terms of provision of Rule 14 of Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994, along with interest read with Section 75 and penalty under Rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

5. The aforesaid show cause notice was adjudicated vide order-in-original dated 30.03.2019, wherein the Adjudicating Authority confirmed the demand of Rs.20,40,012/- under the provision of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994, along with interest

under Section 75 of the Finance Act, 1994 and penalty of Rs.20,40,012/- under Rule 15(3) of the CCR, 2004 read with Section 78 (1) of the Finance Act, 1994.

6. Being aggrieved, the appellant filed the appeal before the Commissioner (Appeals) on the following grounds:-

(i) Reversal done by appellant prior to issue of show cause notice is in accordance with law.

(ii) Reversal already made by the appellant is in compliance with Rule 6 (3).

(iii) Demand is barred by limitation.

(iv) No penalty is imposable and no interest is chargeable.

7. Ld. Commissioner (Appeals) agreeing with the findings of the Asstt. Commissioner, was pleased to reject the appeal.

8. Being aggrieved, the appellant is before this Tribunal, *inter alia,* on the grounds that w.e.f. 1.4.2011, exempted services include trading of goods in terms of the Explanation to Rule 2 (e) of the Cenvat Credit Rules. W.e.f. 1.7.2012, Section 66 B of the Finance Act provides, " for charging of service tax on all services except those mentioned in the negative list . Section 66 D specifies trading of goods in the negative list. Thus, no service tax is leviable on the trading of goods under Section 66 B of the Act.

9. Since the appellant is not maintaining separate books of accounts, it has opted for reversal under Rule 6(3)(ii) of CCR read with Rule 6 (3A). Rule 6(3A) (c)(iii) specifies formula to be adopted for making reversal of cenvat credit on common input services. As per the formula, the numerator is the value of the exempted services provided during the financial year, at 10% of the cost of the goods traded or profit on trading (whichever is higher), and the denominator is taken as the value of the exempted services provided

plus the value of the dutiable goods cleared during the financial year. The resultant fraction is then multiplied by the amount of cenvat credit availed on common input services.

10. It is further urged that the appellant is not disputing its liability for reversal under Rule 6 of CCR, rather the dispute is regarding the correct method for quantifying the proportionate credit for reversal. Admittedly, the appellant have made reversal under Rule 6(3)(ii), even before the issuance of show cause notice, based on the aforementioned formula.

11. The only dispute in the instant case is regarding the value of trading activities to be taken for calculation. Thus, the dispute is whether the numerator of the formula should also include the value of the supplies or the goods used in the execution of the works contract service, as trading goods. Admittedly, the value of the goods transferred in the course of rendering of works contract service, is not a trading simplicitor. There are separate rules –- Service Tax (Determination of Value) Rules, 2006, which provides determination of taxable value for levy of service tax. The value of goods deemed to be supplied in the course of works contract cannot by any stretch of imagination be added to the trading turnover of the appellant. Accordingly, he prays for allowing their appeal with consequential benefits.

12. Ld. Departmental Representative relies on the impugned order.

13. Having considered the rival contentions, I find that the addition to the trading turnover, of the value of the goods deemed to be supplied in execution of the works contract, is erroneous and wrong. Accordingly, I hold that show cause notice is mis-conceived. I further take notice that in the earlier period, identical show cause notice dated 2.9.2016 was issued to the appellant for denying cenvat credit to the extent of Rs.1,37,01,095/- . On

similar grounds, the said show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 26.03.2018, wherein similar demand with respect to the goods deemed to be supplied in the course of works contract service, was dropped. The said order has been accepted by the Department, as no further appeal has been filed.

14. Thus, the impugned order is set aside. The appeal is allowed. The appellant shall be entitled to consequential benefits in accordance with law.

15. The issue of limitation is left open.

16. Miscellaneous application also stands disposed of.

[Operative part already pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.