CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal No.41204 of 2018 – SM

[arising out of Order-in-Appeal No.38/2018 CTA-II), dated 31.01.2018 commissioner of CGST & Central Excise, Central Tax (Appeals-II), Chennai]

M/s.Central Warehousing Corporation **Appellants**
No.4, North Avenue,
Srinagar Colony, Saidapet,
Chennai – 600 015.

VERSUS

Commissioner of Central Taxes and Central Excise, **Respondents**
South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai – 600 035.

Appearance:

Shri G. Natarajan, Advocate, *for the appellants*
Shri L. Nandakumar, Authorised Representative, *for the respondents*

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 20.07.2021
Date of Decision : 20.07.2021

FINAL ORDER No. 41711 / 2021

Brief facts are that the appellants were providing taxable services in the nature of Storage and Warehousing, Cargo Handling Services etc. The Storage and Warehousing services were provided by them in regard to storage of rice. During the period prior to introduction of the negative list in the Finance Act, 1994, rice was

included in the definition of "agricultural produce". Thus, storage and warehousing of rice was not a taxable service till 01.07.2012. After this date, there was change in scenario of definition of taxable services and section 66D contained the list of services, which are not taxable. Clause (d) of section 66D provided such services relating to agriculture and agricultural produce, which are not taxable. Sub-clause (v) of clause (d) of section 66D stated that loading, unloading, packing, storage and warehousing of agricultural produce was exempted from service tax. Section 65B(5) of the Act defined "agricultural produce" as below:

> *"any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but make it marketable for primary market".*

The appellants entertained the view that rice would fall within the definition of "agricultural produce" even after introduction of negative list and hence continued to treat the service of storage and warehousing of rice as an exempted service. Since appellants were providing exempted and taxable services, the credit availed on common input services used for providing the exempted services and taxable service, was required to be reversed proportionately in terms of Rule 6(6) of Cenvat Credit Rules, 2004. The proportionate credit to be reversed is calculated for each financial year and adjusted before 30th of June of succeeding year. The excess reversal made, if any, is taken re-credit before this date. In such manner, in the year 2013, appellants had taken re-credit of excess reversal to the tune of Rs.2,395/-, before the prescribed date.

1.1 The issue in this case is with re-credit taken of Rs.20,83,774/- in March, 2014. After introduction of negative list, there were conflicting views as to whether rice would fall within the definition of "agricultural produce" under section 65(B)(5). Appellants did not pay service tax on these services holding on to the view that rice is an agricultural produce. Only in 2014, vide Notification No.4/2014-ST, dated 17.03.2014, an amendment was introduced whereby services of storage and warehousing of rice was expressly made an exempted

service. Consequently, prior to this date, the services were taxable. Since the appellants were treating Storage and Warehousing Service of rice as an exempted service from 01.07.2012 onwards, they were liable to pay service tax on the Storage and Warehousing Services from 01.07.2012 to 30.11.2013. They paid this arrears of tax along with interest on 28.12.2013. Resultantly, they became eligible to take back the proportionate credit which was reversed by them during this period, when they treated service of storage and warehousing of rice to be exempted service. The appellants then took *suo motu* re-credit of Rs.20,83,773/- being the excess credit reversed by them during the period from 01.07.2012 to 31.03.2013. The department was of the view that the appellants are not eligible to take such *suo motu* credit and also that any such excess credit ought to be adjusted before one year i.e., before 30th of June, 2013. Show-cause notice was issued raising these allegations and for recovery of the wrongly availed re-credit along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellants, the learned counsel Shri G. Natarajan explained the facts of the case and submitted that the appellants had intimated the department vide letter dated 29.03.2014 that they have availed the re-credit of Rs.20,83,773/- which is the amount that was not required to be reversed as the activity of storage and warehousing of rice was not an exempted service for the period between 01.07.2012 to 16.02.2014. He relied upon the decision of the Hon'ble High Court of Madras in the case of *M/s. ICMC Corporation Ltd., Vs CESTAT, Chennai* reported in *2014 (302) E.L.T.45 (Mad.,)* to argue that the Hon'ble Court has held that there is no impediment in taking *suo motu* credit if it is otherwise eligible. It is pointed out by him that the second allegation by the department is that the re-credit was not taken before 30th June of the said year. The amount of Rs.20,83,773/- was taken as re-credit by the appellants as such credit was not required to be reversed at all and is not an adjustment of

credit under Rule 6(3A). So, this time-limit does not apply to the re-credit taken by them. He prayed that the appeal may be allowed.

3. The learned Authorised Representative Shri L. Nandakumar appeared for the department. He supported the findings in the impugned order. It is stressed by him that since the provision in Cenvat credit rules prescribes the period for reversal/adjustment of excess reversal of proportionate credit and is to be made within a year, the re-credit taken by the appellants on 29.03.2014 is against the provisions of law.

4. Heard both sides.

5. The issue is with regard to the re-credit availed by the appellants on 29.03.2014 for an amount of Rs.20,83,773/-. As explained by the learned counsel for the appellants, the said re-credit is not adjustment of the excess reversal of proportionate credit in terms of Rule 6(3A) of Cenvat Credit Rules, 2004. When Notification No.4/2014 made the Storage and Warehousing Services of rice to be exempted services, the said service became taxable for the period 01.07.2012 to 16.02.2014. The appellants had been reversing the proportionate credit on the common input services availed by them. When the reversal/adjustment is made under Rule 6(3A), the time-limit as prescribed in the Cenvat Credit Rules, 2004 would apply. In the present case, the re-credit is an adjustment/correction of the excess reversal which was not required to be made by them. The decision of the Hon'ble High court of Madras in *M/s. ICMC Corporation Ltd.,* (supra) has held that the assessee is eligible to take *suo motu* credit. Following the said decision, I find no ground to hold that the appellants are not eligible to take *suo motu* re-credit of an amount of Rs.20,83,773/-. So also, the allegation of the department that the credit ought to have been take before 30th of June of the succeeding year is without any basis in the facts of this case as it is not reversal of proportionate credit but only re-credit of the credit which was not required to be reversed.

6. From the above discussions, I hold that the impugned order cannot sustain. The same is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

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