CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52868 of 2019 [SM]

[Arising out of Order-in-Appeal No. 151 (SM) CE/JPR/2019 dated 14.05.2019 passed by the Commissioner (Appeals), Jaipur]

M/s. Balkrishna Industries Ltd. **...Appellant**
A-300-305 & 306-313, RIICO
Industrial Area, Chopanki
Bhiwadi-301707
Dist. Alwar (Rajasthan)

VERSUS

Commissioner of Central Excise, Alwar **...Respondent**
Central Excise Commissionerate,
'A' Block, Surya Nagar,
Alwar.

APPEARANCE:

Shri Shaswat Arya, Advocate for the Appellant
Shri P. Juneja, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : **25/03/2021**
DATE OF DECISION : **01.04.2021**

FINAL ORDER NO. 51205/2021

RACHNA GUPTA:

The Order of Commissioner (Appeals) bearing No.151/2019 dated 14.05.2019 has been assailed vide the impugned appeal. The relevant factual matrix for the present appeal is that the appellant is engaged in the manufacture of tyres. The Department observed that the appellant have wrongly filed Cenvat Credit of input services on ineligible services as that of renting of premises

for business purposes. It was observed that the appellant has utilised Cenvat Credit of service tax on the basis of invoices issued by M/s. Grover Stainless Pvt. Ltd., Delhi for the services not availed exclusively by the appellants as the premises were taken on rent for being used as godown not only of the appellant but of all subsidiaries and associated companies of the appellant's group. The service provider leased the premises situated at A-1 RIICO, Industrial Area, Chopanki, Bhiwadi to M/s. Balkrishna Industries Ltd. through its Vice President Mr. Narender Kumar to utilise the premises for business purpose only but by all the subsidiaries and associated companies of the appellant. Accordingly, vide Show Cause Notice No.1285 dated 02.06.2017, it was alleged that the services in question do not fall within the purview of definition of input services and, therefore, the Cenvat Credit of Service Tax taken on the basis of the aforesaid invoices was proposed to be denied as being not admissible. Accordingly, an amount of Rs.17,02,715/- was proposed to be recovered from the appellants alongwith the interest and the proportionate penalties. The said proposal was confirmed initially vide the Order-in-Original No. 72/CE/2017-18 dated 28 March, 2018. The appeal thereof was dismissed vide the order under challenge dated 14.05.2019. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Mr. Shaswat Arya, ld. Advocate for the appellant and Shri P.Juneja, ld. Authorised Representative for the Revenue.

3. It is submitted on behalf of the appellant that the appellants had imported various non-excisable inputs that were required for

the manufacture of tyres. However, the storage space being insufficient in the appellants premises, the appellant required an additional godown for storage of its non-excisable inputs and accordingly entered into a lease agreement dated 29.08.2019 with M/s. Grover Stainless Pvt. Ltd. (GSPL) for leasing its premises situated at A-1 RIICO, Industrial Area, Chopanki, Bhiwadi. It is impressed upon that premises have been used by the appellant exclusively for storing its non-excisable inputs and the rent has been paid by the appellant to GSPL alongwith applicable service Tax on a monthly basis against the invoices raised by them. Due to this reason the appellant availed Cenvat Credit of the Service Tax paid on such monthly invoices raised by GSP. 19 copies of invoices as being attached with the appeal record have been impressed upon.

3.1 It is submitted that though the Department has relied upon para No.5 (b) of the lease agreement but there is no evidence produced by the Department that the premises have been used by the appellants for any of its subsidiary or associated firm in compliance of the said clause of the lease agreement. It is submitted that the agreement was merely a formal covenant saving the interest of the lessor Learned Counsel has drawn attention to Clause 3 of the agreement. It is further submitted that the Department has wrongly invoked Rule 8 of Cenvat Credit Rules vide which the premises of Dy. Commissioner of Central Excise is required for denying the Cenvat Credit of inputs to the appellant. It is submitted that scope of Rule 8 of CCR is for reversal of credit of Cenvatable inputs. Hence, the same is not applicable to the facts of

the present case. The demand proposed on the said basis is not sustainable.

3.2 It is further submitted that both the adjudicating authorities below have passed the order ex-party. No opportunity of hearing was ever given to the appellant. Finally, it is submitted that there is no suppression of relevant facts by the appellant, as no material information has been ever concealed from the Department. The records of the appellant were regularly audited by the Department. Above all, there is no specific evidence produced by the Department to support the allegation of fraud and suppression. The order under challenge is mentioned to have been passed merely on the basis of presumption by wrongly invoking Rule 8 of Cenvat Credit Rules and wrongly alleging the suppression. The order is, therefore, prayed to be set aside. Appeal is prayed to be allowed.

4. While rebutting these arguments, learned D.R. has laid reliance upon clause 5 (b) of the lease agreement wherein it has been specifically mentioned that "lessee shall utilise the demised premises for business purpose only which would deem to mean and include use an occupation of the demised premises by its subsidiary companies or associated companies". It is impressed upon that in view of the said clause in the lease agreement there arises no reason with the appellant to deny the usage of rented/leased premises by appellant's own subsidiary and associated companies also. Learned D.R. has also laid emphasis upon the VAT Registration Certificate which has been issued in favour of four Balkrishna Industries Ltd. existing at four different areas, however,

all being in vicinity of the impugned leased premises. It becomes clear that clause 5 (b) is incorporated in the lease with the sole intention for those premises to be used by the subsidiary companies of the appellant existing in the vicinity. The demands therefore have rightly been confirmed. Otherwise also the appellant has not produced any document to show the exclusive use of the rented premises by them. However, as far as the evidence to be produced by the Department, it is acknowledged that there is no such evidence on record. Learned DR has impressed upon that irrespective, there is no infirmity in the order for want of the evidence to be produced by the appellant to prove the exclusive usage. Order is prayed to be upheld and appeal is prayed to be dismissed.

5. After hearing both the parties and perusing the record, I observe and hold as follows:-

Two issues need to be adjudicated for the disposal of present appeal:

(1) Whether the premises being leased out by M/s. GSPL to the appellants for being used as a godown / storage space for the inputs of the appellants has been used exclusively by the appellant or by its subsidiary and associated companies as well.

(2) Whether to avail the credit of inputs stored in the leased premises appellant was to mandatorily seek permission from Deputy/Assistant Commissioner of Central Excise in terms of Rule 8 of the Cenvat Credit Rules.

5.1 With respect to issue No.1, I observe that the lease agreement has been executed between M/s. Grover Stainless Pvt. Ltd., New Delhi as Lessor and M/s. Balkrishna Industries through its Vice President Narender Kumar, resident of Bhiwadi, Alwar as lessee for leasing the premises situated at A-1 RIICO, Industrial Area, Chopanki, Bhiwadi which is a shed of 70,000 Sq. Ft. agreed to be taken on lease by the appellant to be used as a warehouse. The rent was agreed to be paid on monthly basis by M/s. Balkrishna Industries, the appellant. Appellant only had deposited three months security deposit at the time of impugned lease agreement. Clause 3 thereof recites as follows:-

> *"The demised premises shall be used by lessee to enable it to stock storage of raw-materials, packing materials etc."*

5.2 This clause is absolutely silent about usage of the leased premises for the similar purpose by anyone else than the lessee/ appellant itself. There is no mention of any subsidiary or associated company to be held entitled to use the premises leased out in favour of the appellant. All the lessee covenants were made to be complied with by the appellant itself. As far as clause 5 (b), as relied upon by the Department is concerned though it recites about the subsidiary or associated companies of the appellant but perusal of clause makes it abundantly clear that it is a deemed clause for deemed inclusion of use an occupation by the subsidiary companies or associated companies. It being a deemed provision cannot supersede the clause 3 of the lease agreement as is mentioned above unless and until there is a cogent evidence produced by the

Department to show that the deemed intention had actually and ever been acted upon by the appellant. Apparently and admittedly, there is no such evidence produced by the Department. In absence thereof confirmation to the proposal that the leased premises have not been exclusively used by the appellant is the confirmation based merely on presumption. Such confirmation does not warrant any recovery of the Cenvat Credit as has been availed by the appellant against the Service Tax paid to M/s. GSPL in lieu of the aforesaid lease agreement.

6. Further, I hold that service in question i.e. renting of immovable property is very well covered in "means" as well as "includes" clause of the definition of the input service as given under Rule 2 (I) of Cenvat Credit Rule, 2004. This Rule allows Cenvat Credit of all such services that are used in or in relation to the manufacture of finished goods. There is no denial on part of the Department that the premises taken on lease were used for the storage of raw-material required for the manufacture of tyres, the finished goods of the appellant. The service availed is definitely a service in relation to the manufacture of tyres. Also the Cenvat Credit of input services used for "storage upto the place of removal" and for "procurement of inputs" are admissible for Cenvat Credit. The godown of raw-material and the renting service in respect thereof is a service for storage upto place of removal. Hence the same is an input service. The Cenvat Credit whereof cannot be denied to the appellants. I draw my support from the decision of Hon'ble High Court of Mumbai in the case of **M/s. Deepak Fertilizers and Petrochemicals Corporation Ltd. reported in**

2013 (32) S.T.R. 532 (Bom.) wherein it was held that input service used in relation to creation of storage facilities for inputs outside the premises was in relation to manufacture of goods. Therefore, Cenvat Credit was admissible for the same.

7. Finally, I observe from the 19 invoices as issued by M/s. GSPL on record that the invoices are in favour of the appellants only for using the leased premises by appellants only. The rent thereof has also been paid by appellants only. There is no apparent role of any subsidiary or associated company of the appellant nor there is anything on record which may prove the availment of the impugned service by the said subsidiary/associated companies of the appellants as well. The findings of Adjudicating Authority below to this issue are, therefore, held to be a result of mere presumption. The findings in this respect are therefore, set aside. Accordingly the aforesaid issue No.1 stands decided in favour of the appellant.

8. Coming to the issue No.2 Rule 8 of Cenvat Credit Rules as follows:

> *"Rule 8. Storage of input outside the factory of the manufacturer. – The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store* ***the input in respect of which CENVAT credit has been taken, outside such factory****, subject to such limitations and conditions as he may specify:*

Provided that where such input is not used in the manner specified in these Rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input."

9. The perusal of the Rule makes it abundantly clear that scope of this rule is for reversal of credit of Cenvatable inputs. It is also clear that the permission is required only in cae of the storage of excisable raw-material. It is not the fact for the present appeal. Appellant has submitted that the input stored in the premises was non-excisable. There is no denial by the Department nor there is allegation in the Show Cause Notice about the inputs to be excisable. I observe that, in fact, there is no relevant evidence nor any discussion in the order under challenge despite that the allegation is therein Show Cause Notice and was duly replied by the appellant in his appeal before Commissioner (Appeals). However, the demand has still been confirmed for non-compliance of these rules. In view of the scope of Rule 8 as discussed above, I am of the opinion that Rule 8 has wrongly been invoked by the Department while denying the admissibility of Cenvat Credit to the appellants for his raw-material to have been stored in the impugned leased premises taken on lease by the appellant exclusively from M/s. GSPL and being in use by the appellant exclusively. Therefore, the second issue is also held decided in favour of the appellant.

10. Finally, coming to the plea of limitation as raised by the appellant, it is observed that vide the Show Cause Notice of 14.05.2016 demand for the period w.e.f. April, 2013 to January, 2017 has been raised by invoking the extended period of limitation.

But the extended period can be invoked only in case of contravention of the conditions under Section 11 A (4) of Central Excise Act i.e. where there is the apparent suppression of material facts, fraud or collusion on part of the appellant. It is observed that admittedly appellant was regularly filing its return and was discharging the duty liability. There is nothing on record to prove the alleged concealment of any material information by the appellant from the Department. Admittedly there had been a routine audit of the appellants conducted by the Department. The question of concealment or suppression of any relevant information does not at all arise on part of the appellant. The findings cannot be held as correct, specifically, when there is no other evidence produced by the Department to prove the alleged suppression or fraud. I place my reliance on the decision of Hon'ble Apex Court in the case of **CCE, Jalandhar vs. Royal Enterprises reported in 2016 (337) ELT 482**. Consequent thereof there arises no question of imposition of penalty upon the appellant.

11. As a result of entire above discussion, I hold that the adjudicating authority below has acted merely on the basis of presumption while confirming the impugned demand. The order accordingly, is hereby set aside. Resultantly, the appeal in hand is hereby **allowed**.

[Order pronounced in the open Court on 01.04.2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita