CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 1

EXCISE Appeal No. 10668 of 2021-SM

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-003-APP-10-11-2021-22 dated 21.05.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I]

Bisazza India Pvt. Limited .... **Appellant**
Survey No 372/2 NR GAIL and GIDC Office Village
Budasan, Kadi, Kadi, Gujarat-382715

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
C. Ex Bhavan, Nr. Panjrapole & Polytechnic,
Ambavadi, Ahmedabad, Gujarat-380015

APPEARANCE :

Shri S.J. Vyas, Advocate, for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Revenue.

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 06.01.2023

FINAL ORDER NO. A/10024/2023

RAJU :

This appeal has been filed by M/s. Bisaza India Pvt. Limited against denial of credit on input services of pre-shipment charges and terminal handling charges in respect of export of goods. Pre-shipment service is received after the Let export order by Customs. The second issue involved is, if the appellant have right to choose an option to reverse the amount under Rule 6(3) of Cenvat Credit Rules when they have not specifically exercised any such option before such transaction. The third issue is if second proviso to Section 11AC (1) of Central Excise Act, 1944 can be invoked for the disputed period April 2016 to June 2017.

2. Learned Counsel pointed out that they have availed certain services namely, terminal handing charges, pre-shipment inspection for export of

goods after the Let export order. He argued that the credit of said services has been denied relying on the CBEC Circular No. 999/6/2015-CX dated 28.02.2015 which reads as under:-

> **"4.** In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to determined.
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> **5.** …….
>
> **6.** In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

He argued that the said Circular presumes that after Let export order is issued no further activity is required to be done by the exporter. He pointed out that exporter had availed services of Terminal Handling Charges and Pre-shipment inspection service after Let export order. He pointed out that there are many decisions of Tribunal and also CBEC Circulars to the effect that Port of Export is the place of removal for the purpose of export. In these circumstances, Cenvat credit of services received after the Let export order, cannot be denied.

3. The second issue involved is in respect of amount of Cenvat credit required to be reversed for trading activity done by the exporter. A demand under Rule 6(3)(i) has been against the appellant. The appellant however, opted to reverse the credit under Rule 6(3)(ii) read with Rule 6(3AA). The said option has been denied by the first Appellate Authority on the ground

that it is discretion of the Adjudicating Authority whether to allow or disallow after the transaction is over. Learned Counsel submits that there is no authority to support the claim that the Adjudicating Authority has any such discretion in this regard. He argued that the Appellate Authority remanded the matter to the lower authorities to quantify the amount to be reversed. He argued that in the remand proceedings they should be allowed to choose the option of their choice in compliance with Rule 6 of Cenvat Credit Rules, 2004. The third issue is not pressed by the learned Counsel.

4. Learned Authorised Representative for the Revenue relies on the impugned order.

5. I have considered the rival submissions. I find that there are plethora of judgments for the purpose of export the Port is place of removal. The Circular relied on by the Revenue to deny credit on services used after Let export order also recognizes the Port of export as place of removal. The said Circular prescribes as under:

> **"6.** In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

It is seen from the above that Circular presumes that after the Let export order there is no activity undertaken by the exporter and therefore no credit is available. On this ground Cenvat credit on pre-shipment charges has been denied. In the instant case the appellants continued possession even after Let Export order as is apparent from the fact that they managed

Inspection and handling of goods. In view of above, the Circular is not applicable. The appeal on this count is allowed.

6. The second issue involved is whether the Adjudicating Authority has discretion to choose which method of compliance with the requirement of Rule 6 of Cenvat Credit Rules, 2004 is to be followed by the assessee or not. I find there is no authority in law which gives Revenue to exercise such discretion. There is plethora of decisions which says that discretion of choosing method of compliance with Rule 6 is exclusively with the assessee. In these circumstances the impugned order on this count, cannot be sustained. Therefore, the impugned order remanding the matter to the lower authority to quantify the amount to be reversed is modified to the extent that reversal will be done as per the choice of method of compliance of the appellant in terms of Rule 6 of Cenvat Credit Rules, 2004.

7. As the third issue has not been pressed, the appeal on that count is not allowed.

8. The appeal disposed of in the above terms.

(Order dictated and pronounced in the open court)

(Raju)
Member (Technical)

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