CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70433 of 2021

(Arising out of Order-in-Appeal No.168/ST/Alld./2021 dated 25/06/2021 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s VLCC Healthcare Ltd. .....Appellant
(11/25A, Sardar Patel Marg,
Civil Lines Allahabad, U.P.211001)

VERSUS

Commissioner, CGST, Allahabad ....Respondent
(38, M.G. Marg, Civil Lines, Allahabad-211001, U.P.)

APPEARANCE:

Shri Abhinav Kalra, Chartered Accountant for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70558/2024

DATE OF HEARING : 16.05.2024
DATE OF DECISION : 04.09.2024

P. K. CHOUDHARY:

The present appeal has been filed assailing the Order-In-Appeal dated 25.06.2021 passed by the learned Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. The facts of the case in brief are that the Appellant is engaged in providing "Health Club and Fitness Services" and "Beauty Parlour Services". Apart from the Health Club and Fitness Services and Beauty Parlour Services, VLCC Healthcare Ltd. is also engaged in selling the cosmetic products to its customers. During the course of Audit for the period from April 2016 to June 2017, it was observed that the Appellant had claimed a total CENVAT credit of CVD amounting to Rs.3,99,180/- on the strength of invoices issued by the Gurgaon

Head Office which is duly registered under the service tax laws as Input Service Distributor[1]. It was alleged by the audit team that the Appellant had not reversed the proportionate amount of common CENVAT Credit as is attributable to the trading of the goods i.e. exempted services. A Show Cause Notice[2] was issued demanding deposit of Rs.3,99,180/-. SCN also demanded reversal of CENVAT Credit amounting to Rs.95,007/- under Rule 6(3) of the CENVAT Credit Rules, 2004[3]. After following the due process of law, SCN was adjudicated. The Adjudicating Authority dropped the demand of INR 3,99,180/- in respect of CENVAT credit. However, demand of INR 95,077/- was confirmed under Rule 6(3) of the CCR, 2004 alongwith applicable interest and penalty of equal amount was imposed under Rule 15(2) of the CCR, 2004 read with Section 78 of the Finance Act, 1994. Being aggrieved, the assessee filed appeal before the First Appellate Authority who rejected the appeal before him and upheld the adjudication order. Hence, the present appeal before the Tribunal.

3. The learned Chartered Accountant appearing on behalf of the Appellant submits that the Appellant has been maintaining separate books of accounts as prescribed under Rule 6(2) of the CCR, 2004 for CENVAT Credit exclusively used for taxable and exempted services i.e. trading of goods. Any amount of CENVAT Credit on input or input services that is directly attributable to the trading of goods is not availed by the Appellant. Further, the Appellant has been duly reversing the proportionate amount of credit computed in terms of Rule 6(3A) of the CCR, 2004. It is the case of the Appellant that both the Lower Authorities have failed to acknowledge that the value of exempted services in the case of 'trading of goods' has to be taken in terms of Rule 6 of the CENVAT Credit Rules, 2004 inserted vide Finance Act 2011 w.e.f. 01.04.2011. Accordingly, the value of exempted services for the purpose of Rule 6(3A) shall be the original value i.e. the

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[1] ISD
[2] SCN
[3] CCR, 2004

difference between the sale price and cost price of the goods sold or 10% of cost price, whichever is more. As such, the Appellant has considered the marginal value, it being more than 10% of the cost price and accordingly, computed the value of exempted service.

4. The learned Departmental Representative has supported the finding of the impugned order. He further submitted that though the Appellant have contended that they have maintained separate accounts for inputs used for providing taxable services as well as exempted services, they have not furnished any such materials or documents to prove their contention. Therefore, it is established that the Appellant has not been maintaining separate accounts. It is further submitted that the Appellant has not exercised any option provided under Rule 6(3A) wherein it is stated that the jurisdictional Officer has to be intimated about the exercise of the option to reverse proportionate Credit. Therefore, they are liable to pay 6% of the value of exempted goods. The confirmation of demand, interest and imposition of penalties are therefore legal and proper.

5. Heard both the sides and perused the appeal records.

6. The issue in the present appeal is whether the Appellant is liable to pay an amount equal to 6% of the value of the exempted products when they have opted to reverse the proportionate credit in respect of the trading activity (exempted service).

7. The Department alleges that since the Appellant has not maintained separate accounts, they have to pay an amount equal to 6% of the value of their exempted clearances for the reason that they have not intimated the Department about exercising the option. Rule 6(3A) provides for intimating the Department by issuing a letter as to the exercise of option of reversal of proportionate Credit. In the decision relied by the Ld. Consultant for the Appellant, it has been held that the said

requirement is only procedural in nature and the substantive benefit cannot be denied on such grounds.

8. Further, in this case, the Appellant has intimated the jurisdictional Range Officer, explaining that they were availing only the proportionate Credit on the value of taxable services, which is also reflected in their Balance Sheet as well as their ST3 Returns.

9. For these reasons, the Department ought to have taken note of the fact that the Appellant has exercised the option. The Department cannot force the assessee to pay 5% or 6% of the value of exempted services when the assessee has exercised the option of reversing the proportionate Credit. Appreciating the facts placed before me as well as the decision in the case of M/s. Mercedes Benz India (P) Ltd. Vs. Commissioner of C. Ex., Pune – I – 2015 (40) S.T.R. 381 (Tri. – Mum), I find that the demand raised cannot sustain and requires to be set aside, which I hereby do. The impugned Orders are set aside.

10. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Pronounced in open court on 04 September, 2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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