

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No. E/12206/2018-SM

[Arising out of OIA-CCESA-SRT-APPEAL-PS-663-2017-18 dated 28.02.2018 passed by Commissioner (Appeals) Surat-I]

M/s Scj Colourant

Appellant

Vs

C.C.E.& S.T. Daman

Respondent

Represented by:

For Appellant: Shri V.R. Sethi (Advocate)

For Respondent: Shri. T.K. Sikdar (A.R.)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing/Date of Decision:28.12.2018

Final Order No. A/ 12938 /2018

Per: Ramesh Nair

The facts of the case are that the appellant have availed cenvat credit on the strength of two invoices and two debit notes. In the initial round of litigation, the adjudicating authority denied the cenvat credit on the ground that the documents do not contain the required information as provided under Rule 4A of the Service Tax Rules, 1994. The matter travelled up to this Tribunal and the same vide order No. A/10960/2015 dated 25.06.2015 was remanded with certain observation. In the second round once again credit was denied despite the fact that the appellant have submitted the correct documents as per the direction of the Tribunal. Being aggrieved by the order in original in the second round, the appellant filed appeal before the Commissioner (Appeals) who upheld the order of the original authority and rejected the appeal on the ground that though all the information are appearing in the documents but serial number of debit note is not there, therefore, the present appeal.

2. Sh. V.R. Sethi, Ld. Counsel appearing on behalf of the appellant submits that the appellant have submitted the correct copies of the service tax payment documents, the Commissioner (Appeals) denied the cenvat Credit only on the ground that the debit notes do not bear the serial number. He submits that firstly only on this basis at least credit of the invoices should have been allowed and as regard the corrected debit notes he submits that once a number was given in the original debit notes, therefore, the number was not mentioned in the corrected debit notes. He submits that rule 9(2) proviso does not stipulate that the document should bear the serial number. Therefore, the Commissioner (Appeals) has wrongly denied the credit.

3. Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides, I find that in the first round of appeal before this Tribunal, the Tribunal has passed the following the order.

"4. Heard both sides and perused the case records. It is the case of the appellant that the corrected copies of the cenvat documents were produced before the lower authorities. However, on perusal of case records, it is observed that no such mention is made in the findings of the orders passed by the lower authorities. However, the claim of the appellant that corrected documents were produced by the appellant before the lower authority which makes credit admissible as per proviso to Rule 9(2) of the cenvat Credit Rules 2004. This aspect can only be verified by the Adjudicating Authority whether discrepancies noticed initially were rectified or not as per Proviso to Rule 9(2) of the Cenvat credit Rules. The matter is, therefore, required to be decided by the Adjudicating Authority in remand proceedings. Appeal filed by the appellant is allowed by way of remand to the Adjudicating Authority. Needless to say that the appellant shall be given an opportunity to explain their case regarding rectification of discrepancies before deciding the appeals in de novo proceedings. It is made clear that this Bench has not expressed any opinion on the merits of the case."

5. A plain reading of the above order, I observe that the Tribunal has categorically directed to the lower authority that cenvat credit should be considered on the corrected documents produced by the appellant. On perusal of the correct documents, I find that whatever discrepancies were there were removed by getting the documents corrected from the service provider. I surprise that though the Commissioner (Appeals) pointed out that the deficiency in the debit notes but he has also not allowed the cenvat credit in respect of two invoices wherein he did not point out any error. As regard the debit notes, I agree with the Ld. Counsel that once the debit note number was already given, in the corrected copies there is no need of giving the number, however all other information are corrected in the debit notes, therefore, I do not see any reason why the credit should not be allowed. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated and Pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Neha