

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

Appeal No. E/10861/2018-SM

[Arising out of OIA-CCESA-SRT-APPEALS-PS-318-2017-18 dated 11/12/2017 passed by Commissioner
(Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s. Paras Packaging

Appellant

Vs

C.C.E & S.T –Daman

Respondent

Represented by:

For Appellant: Mr. Naresh Satwani (Advocate)

For Respondent: Mr. A. Mishra (A.R.)

CORAM:

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

Date of Hearing/Decision:13/12/2018

Final Order No. A/ 12961 /2018

Per: Ramesh Nair

The brief facts of the case are that the appellant since did not pay Service Tax on GTA service on reverse charge basis in September 2013, the audit raised objection regarding non-payment of Service Tax on GTA. The appellant on pointing out by the audit party paid the service Tax in September 2013, thereafter, they availed the credit of the said amount. In the second audit, the audit officer raised objection that the credit of said service tax on GTA paid in September 2013 is not admissible for the reason that it is hit by the provision of Rule 9(1)(bb) of Cenvat Credit Rule, 2004. Accordingly, the demand of Cenvat amount was confirmed and the same was upheld by the Commissioner (Appeals) therefore, the present appeal.

2. Shri. Naresh Satwani, Ld. Consultant appearing on behalf of the appellant submits that as regard the demand of service tax no show cause notice was issued, the service tax was paid voluntarily without any contest

by the appellant. Therefore, the case related to payment of service tax on GTA stand concluded, therefore, there is no suppression of facts or mis-declaration. Accordingly the provision of Rule 9(1)(bb) of Cenvat Credit Rule, 2004 is not applicable.

3. Shri. Amit Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order

4. I have carefully considered the submissions made by both the sides and perused the records. The facts are not under dispute that regarding the non-payment of service tax on GTA on pointing out by the audit party the appellant had admittedly paid service tax. As regard the payment of service Tax no show cause notice was issued by the department which shows that the case of non-payment of service tax stand concluded in terms of Section 73 (3) of Finance Act, 1994. Since no show cause notice was issue neither there was the charge of suppression, mis-declaration nor any adjudication thereon. In this position on availment of Cenvat Credit, the department cannot say that there is a suppression of fact, consequently cannot invoke the provision of Rule 9(1)(bb) of Cenvat Credit Rule, 2004.

5. Therefore, the credit cannot be denied by invoking such provision. In my considered view, the appellant have rightly availed the credit of service tax paid by them. The impugned order is set aside the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Prachi