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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.12602 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-286-2019-20 dated 30/08/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

SWAMI CONSTRUCTION ......**Appellant**

Yoginagar Township, Opp. Prabhuta Hall, Chhani Road
Vadodara
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I ....**Respondent**

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

APPEARANCE:

Shri Dhaval Shah, Advocate for the Appellant
Shri G.Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10558 /2022

DATE OF HEARING: 20.05.2022
DATE OF DECISION: 20.05.2022

RAMESH NAIR

The issue involved is that whether the appellant is entitled for Cenvat credit on the strength of challan by which the service tax was deposited under the reverse charge mechanism on pointing out by audit. The case of the department is that since the appellant have paid the service tax on pointing out by the audit and not suo moto, they are not entitled for the Cenvat credit on the basis of challan in view of Rule 9(1)(bb) of Cenvat Credit Rules, 2004.

02. Shri Dhaval Shah, learned counsel appearing on behalf of the appellant submits that they have taken credit of the service tax paid on reverse charge mechanism under challan. He submits that Rule 9(1)(bb) is not applicable in this case whereas, Rule 9(1)(e) is applicable according to which they are eligible for Cenvat credit even though they have paid service tax on pointing out by the audit. He placed reliance on the following judgments:-

- INEOS STYROLUTION INDIA LTD.- 2022 (3) TMI 319- CESTAT AHMEDABAD
- WELLKNOWN POLYESTER LTD- 2021 (6) TMI 948-CESTAT AHMEDABAD
- PACIFIC HARISH INDUSTRIES LIMITED- 2019 (10) TMI 626- CESTAT AHMEDABAD

03. Shri G.Kirupanandan, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He referred to Rule 9(1)(bb) according to which the appellant is not entitled for the Cenvat credit.

04. I have carefully considered the submissions made by both the sides and perused the records. I find that the appellant have paid the service tax on reverse charge mechanism and taken the credit on the challans by which the service tax was paid. The department's case is that the appellant is not entitled to credit on such challans in terms of Rule 9(1)(bb) of Cenvat Credit Rules. I find that the appellant's eligibility of credit is not on the basis of Rule 9(1)(bb) which is on the basis of Rule 9(1)(e) which provides that Cenvat Credit on challan which is evidence of payment of service tax on reverse charge mechanism therefore, the entire case of the department is on wrong footing. Moreover, this identical issue has been considered by this tribunal in the case of INEOS STYROLUTION INDIA LTD (supra) wherein, the tribunal passed the following order:

> *4.We have considered the rival submissions. We find that the appellant has discharged his service tax liability under Reverse Charge Mechanism availing the benefit of VCES Scheme. Rule 9 of Cenvat Credit Rules prescribes the documents on which credit can be availed under the Cenvat Credit Rules. Rule 9 reads as under:*
> *Rule 9. Documents and accounts:- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-*
> *(a) ……………….*
> *(b) ……….*
> *(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]*
> *(c) ……………*
> *(d) …………….*
> *(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]*
> *(f) …………*
> *(g) ……….*
> *5. It is seen that the appellant have argued that Rule 9(1)(bb) does not apply to the service tax paid under Reverse Charge Mechanism by the service recipient. Rule 9(1)(bb) applies only to supplementary invoice, bill or challan issued by "provider of output Service". In the instant case, it is an undisputed fact that service tax has been paid by the appellant under Reverse Charge Mechanism in the capacity of 'recipient of service' and not as 'provider of service'. In these circumstances, the case of the appellant*

would be covered under Rule 9(1)(e) of the Cenvat Credit Rules, 2004. This view is also supported by the decision of Tribunal in the case of Nissan Motors India Pvt. Ltd. (supra) and Polygenta Technologies Ltd. (supra). In the case of Polygenta Technologies Limited (supra) following has been observed:

"5. From the above, it is apparent that Rule 9(i)(bb) is applicable to supplementary invoice, bill or challan issued by provider of output service and Rule 9(1)(e) is applicable, inter alia, to a person liable to pay service tax under Rule 2(1)(d) of Service Tax Rules, 1994. It is apparent that the appellant is not service provider and therefore Rule 9(i)(bb) would not be applicable to them. The appellant is paying service tax on reverse charge basis in terms of Rule 2(1)(d) of Service Tax Rules, 1994 and therefore credit can be availed in terms of Rule 9(i)(e) of Cenvat Credit Rules. Since Rule 9(i)(bb) is not applicable to the appellant, the credit cannot be denied."

6. The entire case of the Revenue is based on invocation of Rule 9(1)(bb) of the Cenvat Credit Rules and since the said Rule is not applicable in respect of the service tax paid by the recipient of service under Reverse Charge Mechanism, the demand of reversal of cenvat credit cannot be upheld. In this background, we do not find any merit in the impugned order and the same is set aside. Appeal is allowed.

In view of the above and on plain reading of Rule 9(1)(e) of Cenvat Credit Rules, 2004, the appellant is entitled for Cenvat credit on the challan whereby, they have deposited the service tax on reverse charge mechanism.

05. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

Mehul