IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/59658/2013-CU[DB]

(Arising out of Order-in-Appeal No.90/ST/APPL/NOIDA/2013 dated 29/04/2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida)

M/s GSC GLASS LTD. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Nishant Mishra (Advocate) for Appellant
Shri Rajeev Ranjan (Addl. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/08/2018
Date of Decision : 08/08/2018

FINAL ORDER NO. - **71921/2018**

Per: Archana Wadhwa

After hearing both the sides, we find that the demand stands confirmed against the appellant in terms of the provisions of Rule 6(3) of Cenvat Credit Rules @ 6% of the value of the exempted final services. The learned Advocate has taken a categorical stand that no Cenvat credit was being availed by them in respect of input services which were used for providing exempted final services. He further submits that there are no common services which stand utilized for providing exempted as also dutiable services, thus requiring no application of the provisions of Rules 6(3). However, he fairly agrees that the said plea was not placed by the appellant before the Original Adjudicating Authority.

2. Learned A.R. submits that in that case the matter needs to be remanded for verifying the appellant's plea.

3. We agree with the above contention of the learned A.R. If the appellant has not availed Cenvat credit in respect of 'Common Cenvatable Input Services' the provisions of Rule 6(3) would not get invoked. As such for verification of the above plea of the assessee, we set aside the impugned order and remand the matter to Original Adjudicating Authority for fresh decision based upon the outcome of factual verifications.

4. As regards small demand of Rs.13,985/- learned advocate fairly agrees that the same is in respect of outward transportation of the goods, which stand decided against them by latest decision of the Hon'ble Supreme Court in the case of Ultra-Tech and as such he is not disputing the same. As regards the penalty he

submits that inasmuch earlier orders of the Authorities were in favour of the assessee, there could not be any *mala fide* so as to attract the penal provisions. While agreeing with the above contention of the learned advocate, we set aside the penalty imposed upon him and uphold the demand to the extent of Rs.13,985/-, alongwith confirmation of interest.

5. Appeal is disposed of in above terms.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks