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

APPEAL No. E/70641/2018-EX[SM]

(Arising out of Order-in-Appeal No. 146/ST/ALLD/2018 dated 14/03/2018 passed by Commissioner (Appeals) CGST & Central Excise Appeal Commissionerate, Allahabad)

M/s Kanpur Cargo Movers **Appellant**

Vs.

Commissioner, Central Goods & Service Tax, Allahabad **Respondent**

Appearance:

Ms Pragya Pandey (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr. AR for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 29/10/2018
Date of Decision : 29/10/2018

FINAL ORDER NO **72557 / 2018**

Per: Anil G. Shakkarwar

The present appeal is directed against the Order-in-Appeal No. 146/ST/ALLD/2018 dated 14.03.2018 passed by Commissioner (Appeals) CGST & Central Excise Commissionerate, Allahabad.

2. Brief facts of the case are that Order-in-Original No. 53/2016-17 dated 25.10.2016 was passed wherein the Commissioner had recorded in order part that appellant had already deposited an amount of Rs.3,53,656/-,

Rs.38,31,356/- in cash and Rs.75,25,999/- through Cenvat credit totaling the amount of Rs.1,17,11,011/- and through the said order the demand of Service Tax of Rs.1,14,15,678/- was confirmed and, therefore, appellant had filed a claim of refund of Rs.2,95,333/- excess deposited by them through an application dated 20.02.2017. The Original Authority allowed the refund through order dated 13.09.2017 by way of credit in the Cenvat account maintained by appellant. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) through impugned order did not interfere with the said Order-in-Original dated 13.09.2017. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the learned counsel for the appellant she has submitted that the appellant had closed down the business, therefore, not in a position to utilize the credit of Rs.2,95,333/- allowed in Cenvat account. She has also submitted that they never claimed for allowing the credit and when the original claim was filed, the claim was for refund of amount of Rs.2,95,333/-. She has further submitted that the said amount of Rs.1,17,11,011/- had two components and component of Rs.75,25,999/- was paid through debit to Cenvat Credit and rest was through cash deposit and, therefore, they were eligible for cash refund of excess paid amount.

4. Heard the learned AR who has supported the impugned Order-in-Appeal.

5. Having considered the submissions from both the sides and on perusal of record I find that the appellant have a right to debit first the credit available in their Cenvat account and then pay through cash if there is any balance to be paid. Therefore, while arriving at excess payment the excess payment cannot be attributed to excess debit of Cenvat Credit but it must be attributed to excess deposit of cash. I, therefore, modify the impugned order to the extent that the refund of Rs.2,95,333/- is allowed to the appellant and set aside the words “By way of credit in their Cenvat Credit”. Further I direct the Original Authority to issue the cheque along with interest as per law to the appellant within a period of four weeks from today.

6. In above terms appeal is allowed.

(Dictated & Pronounced in Court)

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

Ankit