CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 50094 of 2015-CU[DB]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-66-14-15 dated 14/10/2014 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Tirupati Structurals Ltd. .....Appellant

(A-6/5, Site-IV, Industrial Area, Sahibabad, Ghaziabad)

VERSUS

Commissioner of Central Excise, ...Respondent

(CGO, Complex-II, Kamla Nehru Nagar, Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Mohammad Altaf,
Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 70948 / 2019

Date of Hearing : 25/04/2019
Date of Decision : 25/04/2019

PER: ARCHANA WADHWA

The demand stands made against the appellant at the particular percentage of the value of exempted service in terms of Rule 6 (3) (i) on the ground that trading of inputs is an exempted service. Inasmuch as, the appellant is clearing the inputs 'as such' after making the debit entries in their Cenvat account, appellant contented that clearance of the inputs "as such" cannot be held to be trading activity and accordingly as such, demand cannot be raised against them in terms of Rule 6 (3) of Cenvat Credit Rules.

2. As such, it is seen that a short issue involved is as to whether the removal of inputs "as such", can be considered to be a trading activity or not. We find that the issue is settled by this Tribunal in the case of Commissioner of Central Excise & S.T., Ghaziabad Vs Mahaveer Cylinders Ltd. reported as 2016 (341) ELT 361 (Tri.-All.) laying down that the imported goods cleared "as such" cannot be considered to be a trading activity so as to invoke the provisions of Rule 6 (3) (i).

3. By following the said decision, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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