CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL ALLAHABAD

REGIONAL BENCH -COURT No. I

Service Tax Appeal Nos.70378 & 70476 of 2017-[DB]

1. Service Tax Appeal No.70378 of 2017

(Arising out of Order-in-Original No. ALD/EXCUS/000/(ST-139/2015) 13 of 2017 dated 28/02/2017 passed by Commissioner of Central Excise & Customs, Allahabad)

M/s Bridge & Roof Co. (India) Ltd. .....Appellant

(Kankaria Centre, 5th Floor, 2/1 Russel Street, Kolkata-700071)

VERSUS

Commissioner of Customs, Central Excise&

Service Tax, ...Respondent

(38M.G. Marg, Civil Lines, Allahabad-211001)

WITH

2. Service Tax Appeal No.70476 of 2017

(Arising out of Order-in-Original No. ALD/EXCUS/000/(ST-139/2015) 13 of 2017 dated 28/02/2017 passed by Commissioner of Central Excise & Customs, Allahabad)

Commissioner of Customs, Central Excise&

Service Tax, ...Appellant

(38 M.G. Marg, Civil Lines, Allahabad-211001)

VERSUS

M/s Bridge & Roof Co. (India) Ltd. ....Respondent

(Anpara-D, Thermal Power Station, DPTS, Anpara, Sonebhadra-231225)

APPEARANCE:

Shri Tarun Chatterjee, Advocate & Ms Binita Pandey 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.- 71026-71027 / 2019

Date of Hearing : 20/02/2019
Date of Pronouncement: 21/05/2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by learned Counsel Shri Tarun Catterji for the appellant and learned Authorised Representative Shri Mohammad Altaf, Assistant Commissioner for the revenue, we note that the appellant, which is Thermal Power Station, was registered with the Service Tax Department for providing various taxable services.

2. Proceedings were initiated against them for denial of Cenvat credit of Rs.3.62 crores approximately availed by them during the period 2010-11 to 2014-15 on the allegation that proper duty paying documents have not been produced by them before the audit party. During adjudication, the Commissioner has observed that appellants have now placed adequate documents as required under Rule 9 (2) of Cenvat Credit Rules, to the extent of Rs.3,53,60,238/- Accordingly, he has held that denial of credit to the above extent is not to be upheld.

3. In addition, he denied the benefit of credit to the extent of Rs.57,55,108/- on the finding that the said credit accrued to them at a later date and was utilized by the appellant for payment of service tax liability for the prior

period, in violation of provisions of Sub-rule (4) of Rule (3) of Cenvat Credit Rules, 2004. The same was also accordingly confirmed by the adjudicating authority along with imposition of penalties.

4. The appellant has drawn our attention to the Board's Circular No.267/96/2009-CX8 dated 28.03.2012 laying down that restriction with regard to utilization of Cenvat credit is related to normal payment of duty in terms of rule 8 of Central Excise Rules, 2002.

5. They also made reference to the Tribunal decision in the case of Arjay Apparel Industries Ltd. Vs Commissioner of Central Excise, Coimbatore reported as 2008 (232) ELT 662 (Tri.-Chennai) laying down that there is no prohibition in assessee paying short paid/unpaid/defaulted amount using Cenvat credit which accrued to them subsequently. Reliance has also been placed upon Hon'ble Supreme Court's decision in the case of Collector of Central Excise, Pune Vs Dai Ichi Karkaria Ltd. reported as 1999 (112) ELT 353 (SC).

6. We note that the disputed issue relates to factual position, inasmuch as, it is not clear that the credit stands utilized for normal payment of duty in terms of Rule 8 or the same was for short paid duty, the matter needs to be

re-adjudicated in the light of above Board’s circular and case law relied upon by appellant. Accordingly, we set aside the impugned order and remand the matter to Commissioner for fresh decision.

(Pronounced in Court on- 21/05/2019)

(ArchanaWadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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