CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70690 of 2019

(Arising out of Order-in-Appeal No.282-ST/APPL/LKO/2019 dated 31.05.2019 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

M/s Beeaar Autowheels India (P) Ltd. **.....Appellant**
(9, Shahnajnaf Road, Premier Building,
Hazratganj, Lucknow, UP)

VERSUS

Commissioner, CGST & Central Excise, Lucknow

....Respondent

WITH

Service Tax Appeal No.70240 of 2021

(Arising out of Order-in-Appeal No.128-ST/APPL/LKO/2021 dated 31.03.2021 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

M/s Beeaar Autowheels India (P) Ltd. **.....Appellant**
(9, Shahnajaf Road, Premier Building, Hazratganj, Lucknow, UP)

VERSUS

Commissioner, CGST & Central Excise, Lucknow

....Respondent

<u>APPEARANCE:</u>

Shri Kapil Vaish, Chartered Accountant for the Appellant
Shri Anupam Kumar Tewari, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 70200-70201 / 2021

DATE OF HEARING: 05, August, 2021
DATE OF DECISION: 05 August, 2021

ANIL CHOUDHARY:

Heard the parties. The issue involved herein is that the appellant who are engaged in the service of motor vehicle and business auxiliary service. Due to the nature of their business being trading in automobile, they had taken cenvat credit on common input services, which practice was going on for last several years prior to April 2011, when by way of amendment in the law, trading became exempted service, by amendment in the definition of service. However, due to ignorance, appellant had taken the cenvat credit and at the same time inadvertently they forgot to reverse proportionate cenvat credit relating to exemption service as required by Rule 6(3). Subsequently, on being pointed out by the Department, either prior to issuance of show cause notice, or upon issuance of show cause notice the appellant reversed appropriate credit as required under Rule 6(3) under intimation to Revenue. Appellant also paid the interest for the late reversal as prescribed. These facts are undisputed. However, vide Order-in-Original the proposed demand was confirmed along with penalty. The learned Commissioner (Appeals) in both the appeals has set aside the demand observing that appellant had complied by reversing the appropriate amount as required under Rule 6(3). However, it was further observed that there is definitely breach of provisions of law.

2. "I find that the appellant has deposited the specified amount under Section 6(3) only after being pointed out by the Revenue." Accordingly, Commissioner (Appeals) has upheld the penalty.

3. Learned counsel assailing the penalty states that due to the change in law, which have not come in notice, neither there was any advisory by the department, nor any public notice was given in the news paper by the Department, thus it is a case of venial breach of law and there is no contumacious conduct on the part of the appellant. Accordingly, he prays for setting aside the penalty. He further relies on the Division Bench ruling of the Tribunal in the case of Hindustan Antibiotics Ltd. V/s Commissioner of C. EX., Pune 2016 (42) S.T.R. 387 (Tri.-Mumbai).

4. Learned A.R. appearing for Revenue relies on the impugned order.

5. Having considered the rival contentions, I hold that it is a case of venial breach and there is no contumacious conduct on the part of the appellant. Penalties imposed are set aside and appeals are allowed. Appellants are entitled for consequential relief, in accordance with law.

(Dictated and pronounced in open court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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