CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

COURT NO. 2

Service Tax Appeal No. ST/20006 of 2019

(Arising out of Order-in-Appeal No. 404/2018 CT dated 01.10.2018 passed by the Commissioner of Central Excise (Appeals-II), Bangalore).

M/s. Astra Zeneca Pharma India Ltd., Appellant
Block No. N1, 12th Floor,
Manyata Embassy Business Park,
Rachanahalli, Outer Ring Road,
Bangalore-560 065.

Vs.

The Commissioner of Central Taxes (Appeals-II) Respondent
Traffic Transit Management Centre,
BMTC Building, 4th Floor, Above BMTC Bus Stand,
Domlur, Old Airport Road, Bangalore-560 071.

APPEARANCE:

Shri Sathya Vageeswaran, Advocate, for the appellant
Ms. Kavita Podwal, AC (AR). Authorized Representative for the Respondent

CORAM :

HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER No. 20428/2019

Date of Hearing: **29.03.2019**
Date of Decision: **29.03.2019**

Per: P. Dinesha,

The appellant herein M/s. Astra Zeneca Pharma India Ltd., are providing services under GTA, Clearing and Forwarding Service, Technical Testing and Analysis service, etc. During audit for the period April 2013 to March 2016 it was observed by the department that the appellant had availed Cenvat credit wrongly on input services to the tune of Rs. 9,69,227/- on invoices which were issued beyond the stipulated period of six months/one year and thus had contravened the proviso to Rule 4 (1) of Cenvat Credit Rules, 2004. On being pointed out the appellant had reversed the entire amount under protest on 26.05.2017. A Show Cause Notice dated 29.05.2017 came to be issued thereafter for recovery of wrongly availed credit during the above period, alleging suppression of facts with intent to evade payment of duty as also proposing appropriation of Rs. 9,69,227/- apart from interest and penalty. After due process of law, the adjudicating authority confirmed the demand and interest and also imposed equal penalty under Section 78 of the Finance Act, 1994 as proposed. Aggrieved, appellant approached the Commissioner (Appeals) interalia on the grounds that the credit was taken as per law; that the restriction on availment of credit within one year/6 months is unconstitutional; that they had reversed the credit before the issuance of SCN and that imposition of penalty was unwarranted. The Commissioner (Appeals), however, vide impugned Order in Appeal, upheld the order of the adjudicating authority with regard to confirmation of demand, but extended the benefit of erstwhile Section 80 of the Finance Act, 1994 to set aside the penalty under Section 78 for the period upto May 2015. Further, confirmed demand of an amount of Rs.2,59,288/- as inadmissible credit availed for the period 15 June 2015 to March 2016. Aggrieved, appellants are before this forum.

2. Heard Shri Sathya Vageeswaran, Ld Advocate, for the assessee and Ms. Kavita Podwal, Ld. DR for the Revenue.

3.1 The SCN dated 29.05.2017 issued for the period covering April 2013 to March 2016 alleges irregular availment of Cenvat credit and on time barred invoices, being contrary to the proviso to Rules 4 (1) and 9 (6) of Cenvat Credit Rules, 2004. The arguments of the Ld. Advocate placing reliance on the appellant's contentions carried in its reply dated 14.06.2017 to the SCN makes it abundantly clear that the Order-in-Original dated 15.02.2018 is passed without taking into consideration the legal arguments of the appellant's which, further came to be upheld by the impugned Order-in-Appeal.

3.2 A perusal of the above reply dated 14.06.2017, which is placed on record clearly explains the stand of the appellant interalia that the allegations in the SCN were incorrect in as much as, in the first place the applicability of Rule 4 (1) of CCR itself was questioned based on the decision of the Hon'ble Gujarat High Court in the case of *Baroda Rayon Corporation Limited Vs. UOI* – 2014 (306) ELT 551 (Guj.); that on being pointed out the Cenvat credit was reversed under protest; that there was no irregular availment of Cenvat credit and that the same was available in the appellant's ST-3 return only and that since the same was alleged to have been found by the internal audit of the appellant's ST-3 return, there is no suppression and hence invocation of extended period of limitation was unjustified. The Commissioner (Appeals) in the impugned order, however, has set aside the penalty under Section 78 of the Finance Act, 1994, upto May 2015 against which the Revenue has not preferred any appeal which only implies that there was no suppression.

3.3 In the light of the above observations, I am of the considered opinion that the matter requires re-adjudication and the adjudicating authority shall take into consideration all the legal arguments of the appellant and pass a speaking order. Needless to say, the adjudicating authority shall give reasonable opportunities to the assessee to put-forth its case. All the contentions of the assessee are left open.

4. Consequently, the appeal is allowed by way of remand.

(Operative part of the Order and pronounced in the Open Court)

(P. DINESHA)
JUDICIAL MEMBER

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