CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH
Court-I

Date of hearing/Decision:12.04.2018

Appeal No.E/60889/2017
(Arising out of OIA No.55/CE/CGST-APPEAL-GRRUGRAM/SG/2017 dt.31.8.2017 passed by the CCE(Appeals), Delhi-II, Gurgaon)

CCE, Gurgaon **Appellant**
Vs.
M/s.Krishna Ishizaki Auto Ltd. **Respondent**

Appeal No.E/60020/2018
M/s.Krishna Ishizaki Auto Ltd. **Appellant**
Vs.
CCE, Gurgaon **Respondent**

Present for the Appellant: Shri Amarinder Singh, Advocate
Present for the Respondent: Shri V.Gupta, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. 62223-62224/2018

PER: ASHOK JINDAL

Both sides are in appeal against the impugned order.

2. The facts of the case are that the assessee has availed Cenvat credit on inputs service. The credit sought to be denied on the premise that in some invoices either invoice no. is not mentioned or invoices having hand written number. The credit also sought to be denied on renting service which has been availed for for residence of Technical Director of the company on the premise that the said input service is not covered under 2(l) of Cenvat Credit Rules, 2004 for the period prior to 1.4.2011. The matter was adjudicated, the adjudicating authority denied the credit but on appeal after satisfying himself that the assessee has received input

service and allowed the credit on the invoices wherein in some invoices either serial no. is not mentioned or invoices having hand written serial number but disallowed credit on renting of immovable property service for residence of Technical Director of the company. Against the said, both sides are in appeal.

3. Heard the parties.

4. With regard to the appeal filed by the Revenue is that invoice no. is not printed on the invoice, the appellant is not eligible for credit. In this regard, Ld.AR has relied on Rule 9(2) of Cenvat Credit to say that as per requirement of said Rule, invoices No. should be printed on the invoice. In support of this, he relied upon the decision of Hon’ble Himachal Pradesh High Court in the case of Chandra Laxmi Tempered Glass Co.Pvt.Ltd-2009 (234) ELT 245 (HP) and Bajaj Tempo Ltd. vs. CCE, Pune-2010 (18) STR 95 (Tri.-Mum). I have gone through those decisions. In the case of Bajaj Tempo Ltd. (supra), there was dispute regarding availability of input credit on duplicate invoices. The facts altogether are different in the case in hand. Therefore, the said judgment is not applicable to the facts of this case. With regard to the decision in the case of interpretation of provisions of Rule Chandra Laxmi Tempered Glass Co.Pvt.Ltd. (supra), in the said case, Hon’ble High Court had rendered the decision with regard to the interpretation of provisions of Rule 57GG (4) in Notification No.23/95-CE (N.T.) dated 30.05.1995. Admittedly, Rule 57GG which has been examined by the Hon’ble High Court has not invoked in the case in hand. In fact, in this case, the credit sought to be denied in terms of Rule 9 of Cenvat Credit Rules, 2004 and for availment of Cenvat

credit, the provisions of Rule 9 (2) is very much relevant which reproduced below:-

> " **Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit."

5. In that circumstance, if the adjudicating authority or an officer satisfies himself with regard to the receipt of the inputs and input service in the premises of the assessee then the assessee is entitled to avail credit, despite, invoice No. is not mentioned on the invoice. Admittedly, the provisions of Rule 57GG are not applicable during the relevant period. Therefore, the decision of Hon'ble High Court in the case of Chandra Laxmi Tempered Glass Co.Pvt.Ltd. (supra), is not applicable to the facts of this case.

6. I come to defence taken by the assessee. It is not in dispute that the assessee has not received input service having not paid service tax thereon. These services have been used by the assessee in the course of their business of manufacturing, in that circumstance, it is not the case of the Revenue that these input services are not covered under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, I hold that the Commissioner (Appeals) has rightly allowed the Cenvat credit to the assessee against the invoices wherein the invoice No. is not written or hand written.

7. With regard to the appeal filed by the filed by the assessee, the credit sought to be denied on the premise that rent paid for the residence of Technical Director having no nexus of the assessee, therefore, they are not entitled to avail credit. In the case of Ultratech Cement Limited-2010 (260) ELT 369 (Bom.), the Hon'ble Bombay High Court has held that any input service availed by the assessee in the course of their business of manufacture of excisable goods, , the appellant is entitled to avail credit on these services. I find that the Technical Director is an employee of the company who assisted the assessee to do day to day manufacturing operation. The rent paid for technical director as terms of employment and is a part of expenses incurred by the assessee. Admittedly, the said service has been availed prior to amendment in Rule 2(l) of Cenvat Credit Rules, 2004 with effect from 1.4.2011. Once such service has been excluded specifically, in that circumstance, the credit has been correctly availed by the assessee prior to that period, it is mandate of law, the assessee was entitled to avail credit. Therefore, in view of the decision of Hon'ble Bombay High Court in the case of Ultratech Cement Limited, I hold that the assessee is entitled to avail credit of service tax paid on rent for residence of Technical Director.

8. Further I take note of the fact that in this case, the show cause notice was issued on 27.8.2015 by invoking the extended period of limitation. Therefore, I hold that the extended period of limitation is not invokable in this case.

9. In view of the above discussion, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed.

(dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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