**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**CHANDIGARH**
~~~~~

REGIONAL BENCH – COURT NO. 1

**Appeal No. ST/60008/2021**

[Arising out of OIA No. Lud-EXCUS-001-APP-504-2020 dt. 09.10.2020 passed by the Commissioner (Appeals) of Central Goods & Service Tax, Ludhiana]

**Mayfair Resorts** **: Appellant (s)**
NH-I, G.T.Road,
Near DAV College, Jalandhar

Vs

**CGST, Jalandhar** **: Respondent (s)**
Commissioner, CGST, F-block
Rishi Nagar, Ludhiana

APPEARANCE:
Shri Sudhir Malhotra, Advocate for the Appellant
Shri Rajeev Gupta, Shri H. S. Brar, Authorised Representatives for the Respondent

**CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**ORDER No. A/60818/2021**

Date of Hearing:07/04/2021

Date of Decision:06.05.2021

***Per : Mr. Ashok Jindal***

The appellant is in appeal against the impugned order wherein cenvet credit of Rs. 3,88,954/- has been denied and equivalent amount of penalty is also imposed.

2. The facts of the case are that the appellant is a service provider and registered under the category of Mandap Keeper and Renting of Immovable Property Service. In ST-3 return ending with 30.09.2014, the appellant has shown opening balance of cenvet credit of Rs. 4,71,397/- as against the Closing Balance of cenvet credit amount of Rs. 1,05,705/- as per their ST-3 return for the period ending 31.03.2014. Therefore, it was alleged that the appellant has claimed
~~~~~

excess cenvet credit as per their ST-3 return and a show cause notice was issued on 22.04.2016 to the appellant for reversal of excess cenvet credit taken in their cenvet credit account on 01.04.2014. Both the authorities below have denied the cenvet credit. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the appellant has inadvertently shown the closing balance of cenvet credit in their cenvet credit in ST-3 return as 1,05,705/- instead of 4,71,397/- for the period ending March 2014. Therefore, the opening balance shown in 01.04.2014 is correct and they have taken the cenvet credit correctly. He fairly submits that the appellant could not file revised return for the period ending 31.03.2014, but as per records, the cenvet credit account is having the balance in their cenvet credit account. Therefore, it is inadvertent mistake/clerical mistake of the appellant while filing ST-3 return ending March 2014. The said fact can be verified from the records, in that circumstances, the impugned order is to be set-aside.

4. On the other hand, the Ld. AR submits that the facts are not disputed by the appellant and they have not filed any revised return for March 2014, in that circumstances, they are not entitled to take cenvet credit. Therefore, the appeal is to be dismissed.

5. Heard the parties and considered the submissions.

6. On careful consideration of submission made by both sides, I find that it is a fact on record that for the period ending 31.03.2014, the appellant shown the balance in cenvet credit as 1,05,705/- in their ST-3 return and opening balance on 01.04.2014 was shown as 4,71,397/-. In these circumstances, it is crucial to examine the records of the appellant pertaining to cenvet credit account whether

the appellant has inadvertently made a mistake while filing the ST-3 return for the quarter ending March 2014 or intentionally has taken the excess cenvet credit on 01.04.2014. These facts can be verified from the records of the appellant. The said ascertainment of the said fact was to be done by the adjudicating authority which the adjudicating authority has not done at the time of adjudication after issuance of show cause notice to the appellant.

7. In that circumstances, I remand matter back to the adjudicating to verify the records of the appellant showing the closing balance on March 2014 and opening balance of April 2014. If the appellant is having closing balance on 31.03.2014 is 4,71,397/-, in that circumstances, the appellant should be given the benefit of mistake occurred by the appellant while filing ST-3 return. If the appellant is not having the balance in their cenvet credit account of Rs. 471397/- then the cenvet credit is to be denied to the appellant and the penalty is required to be imposed.

8. In view of the discussion, the adjudicating authority is directed to verify the records of the appellant within a reasonable time. The matter is remanded back to the adjudicating authority to verify the records as directed above and pass an appropriate order.

7. Appeal is disposed of by way of remand.

*(Order Pronounced on 06.05.2021)*

**(Ashok Jindal)**
MEMBER (JUDICIAL)

*G.Y.s*