CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

Excise Appeal No.60333 of 2021

(Arising out of Order-in-OriginalNo. 58/ST/Commr/PKL/SSK/2020-21dated 20.04.2021passed by the Commissioner of Central Goods & Service Tax).

M/s. Gabriel India Limited ....Appellant
1st Floor, Shop No. 6 & 7, Naya Bazar,
Tura Mandi, Najafgarh, Delhi-110043.

VERSUS

Commissioner ofCentral Excise & Service Tax, Panchkula ....Respondent
GST Bhawan, Sector-25,
Panchkula-134116.

APPEARANCE:

Ms. Archana Jain, Chartered Accountant for the Appellant
Ms. Shivani, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO.60071/2022

Date of Hearing:02.05.2022
Date of Decision: 08.07.2022

PER: AJAY SHARMA

This appeal has been filed limiting the challenge to the confirmation of the demand of Rs. 15,50,625/- in the Order-in-Original dated 20/04/2021 passed by the Commissioner, CGST, Panchkula. Since rest of the demand raised in the show cause notice dated 08/05/2015 has been dropped by the learned Commissioner and it has not been challenged by the Revenue anywhere so it attained finality.

2. The issue involved in the instant appeal is regarding wrongfulavailment of Cenvat Credit by the appellant and recovery of the same from them as per Cenvat Credit Rules, 2004 read with section 11A (5) of Central Excise Act, 1944?

3. Heard learned Chartered Accountant for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions filed by the respective sides. A show cause notice dated08.05.2015 was issued to the appellant for wrongful availment of Cenvat Credit on various grounds totalling Rs.8,26,31,564/-. Out of the aforesaid demand, the Adjudicating Authority vide impugned order dated 20.04.2021 confirmed the demand of Rs. 15,50,625/- only, with the observation that although the explanation given by the appellant appears to be convincing but neither during the audit nor during the Adjudication proceedings they produced documentary evidence in support of their submission. Learned Chartered Accountant submits that the aforesaid observations/findings by the learned Commissioner is incorrect as the appellant had produced all the relevant documentary evidences as Annexure A/9 to reply dated 05/03/2015 *(submitted with the Department on 13/03/2015)*.The learned Authorised Representative on the other hand disputed the submission of relevant documentary evidences by the appellant at any point of time. She submits that even if the argument of learned Chartered Accountant is accepted then the said documentary evidenceneeds to be examined at the lower level and thereforethe matter isto be remanded to the Adjudicating Authority for examining the same.

4. The submission made by learned Authorised Representative seems to be reasonable as the demand was confirmed by the Adjudicating Authority only on the ground that the appellant did not produce any documentary evidence in support of their submission. Therefore without going into the merits of the appeal, I am inclined to remand the matter to the Adjudicating Authority. But what I gathered from the impugned order is that the documents filed by the appellant on 05.03.2015/13.05.2015 were not available with the Adjudicating Authority, for whatever reason. Therefore, the appellant is directed to file all the relevant documentary evidence with the Adjudicating Authority within a period of two weeks from the

date of this order, in support of their submission qua the demand of the amount of Rs. 15,50,625/- as the Adjudicating Authority is the proper Authority to examine the documentary evidences. The Adjudicating Authority is directed to decide the issue involved herein afresh after taking into consideration the documentary evidence to be produced by the appellant in support of their submission and after following the principle of natural justice. Since the issue involved is very short, therefore the Adjudicating Authority is directed to decide the issue within the period of three months from the date of receipt of this order. This appeal is accordingly allowed by way of remand.

(Pronounced in open Court on 08.07.2022)

(Ajay Sharma)
Member (Judicial)

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