IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]

Appeal No.: E/40193/2018

[Arising out of Order-in-Appeal No. 274/2017 (CTA-I) dated 30.10.2017 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai.]

M/s. Amul Polycure Industries Ltd., **: Appellant**
New No. 13, Old No. 8, Kailasam Street,
Tondiarpet,
Chennai – 600 081

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate

Appearance:-
Shri. N. K. Bharath Kumar, Consultant
for the Appellant
Shri. B. Balamurugan, AC (AR)
for the Respondent

CORAM:
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 27.11.2018

Date of Pronouncement: 06.12.2018

Final Order No. 43054 / 2018

In this appeal, the assessee has challenged the denial of CENVAT Credit to the extent of Rs. 68,879/-.

2. Today when the matter came up for hearing Ld. Consultant Shri. N. K. Bharath Kumar appeared for the assessee while Ld. AC (AR) Shri. B. Balamurugan appeared for the Revenue.

3. Ld. Consultant submitted that this is the second round of litigation against the demand. In the first round, the matter had travelled up to the Tribunal against the denial of CENVAT Credit to the extent of Rs. 1,75,010/- and the CESTAT, while allowing the CENVAT Credit to the extent of Rs. 64,051/-, had remanded the matter back to the file of the adjudicating authority for verification of Credit to the extent of Rs. 68,879/- which pertained to 122 invoices. He further submitted that since the above 122 invoices were already submitted, the same is required to be allowed. He thus pleaded for dropping of penalties for non-submission of invoices and further remand for verification.

4. *Per contra*, Ld. AR for the Revenue while supporting the findings of the lower authorities, contended that the appellant in the remand proceedings had filed only the list of invoices and not the actual invoices. He therefore requested for upholding of the impugned Order.

5. I have considered the rival contentions and also perused the materials placed on record.

6. I find that in the statement of facts, against the total amount of CENVAT Credit denied of Rs. 1,75,010/-, this Bench had allowed the Credit to an extent of Rs. 64,051/- and as per the

appellant's own pleading, the remand Order was specifically for verification of the invoices which amounted to Rs. 68,879/-. There being no further appeal against the Order of this Bench, the same is final and hence, the scope of the *de novo* proceedings as also the present Order can only be Rs. 68,879/- pertaining to the 122 invoices.

7. Further, the demand to be confirmed as per the chart in the appellant's statement of facts comes later i.e., only when the appellant's claim with regard to 122 invoices *(supra)* is satisfied.

8. I find that the assessee through its Authorized Representative has made a submission before the adjudicating authority in the *de novo* proceedings that they were not able to furnish/submit the 122 invoices as directed by the Tribunal based on which the adjudicating authority has confirmed the recovery of input service tax Credit to the above extent. Hence, I do not see any valid reason to interfere with the findings arrived at by the first appellate authority who has concurred with the findings of the adjudicating authority in the *de novo* adjudication.

9. With regard to penalties, however, I note that the list of invoices included the service tax Credit availed against payments made to various service providers which came to be denied

because of the reason that the appellant could not produce the original documents during the *de novo* proceedings, which, as pleaded by the Ld. Consultant, were misplaced/could not be traced, for which reason no motive as to suppression of facts, fraud, etc. could be attributed. Hence, I am of the view that in the above factual background, the penalty as confirmed in the impugned Order requires to be set aside and the same is therefore set aside.

10. The appeal is treated as partly allowed; the demand with regard to penalty alone is set aside.

(Pronounced in open court on ***06.12.2018****)*

(P. Dinesha)
Member (Judicial)

Sdd