IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/787/2007

(Arising out of Order-in-Appeal No.119/2007 (P) dated 24.8.2007 passed by the Commissioner of Central Excise (Appeals),Chennai)

M/s. Auro Electricals Appellant

Vs.

Commissioner of Central Excise, Puducherry Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri R. Subramaniyam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **24.08.2017**

Final Order No. 41861/2017

Per Bench

The allegations raised against the appellant is that they availed CENVAT credit on capital goods and simultaneously availed depreciation under section 32 of the Income Tax, 1961. Show cause notice was issued proposing to recover the irregularly availed credit along with interest and also for imposing penalty. After due process of law, the original authority confirmed the duty wrongly availed credit of Rs.1,67,800/- along with interest and imposed equal penalty besides separate penalty of Rs30,000/- under Rule 13(1) of CENVAT Credit Rules, 2002.

In appeal, Commissioner (Appeals) upheld the demand and the equal penalty imposed. However, he set aside the penalty of Rs.30,000/-. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, ld. Counsel Ms.Minchu Mariam Punnose submitted that though the appellant had erroneously availed CENVAT credit as well as depreciation under the Income Tax Act on the capital goods, the error was later corrected by filing appropriate revised returns before the Income Tax authorities. Such revised returns as well as the acknowledgment was produced before the authorities below. However, the same has not been considered at all. The ld. Counsel also submitted that the appellants had produced the auditor's certificate wherein it is shown that the appellant has filed revised returns. That no queries whatsoever have been raised by the Income Tax authorities and the returns filed for the subsequent periods have also been accepted by the department. That the department has denied the credit stating that the appellant has to produce the assessment order and it is not possible for the appellant to obtain such assessment orders and the filing of returns itself would be sufficient compliance of rectification of the error committed by the appellant.

3. Against this, the ld. AR Shri R. Subramaniyam reiterated the findings in the impugned order. He submitted that the revised returns filed by the appellant after the due date would

not regularize the credit wrongly taken by the appellant. Further, there is no evidence to show that the revised returns has been accepted by the Income Tax Department. That therefore the demand raised is legal and proper.

4. Heard both sides.

5. The appellant has furnished the revised returns to the authorities below. So also the acknowledgment of the receipt of the revised returns by the Income Tax Department is also produced by the appellant. Certificate from the auditor is also submitted. All these documents would go to show that the appellant has taken steps to rectify the defect. The ld. Counsel has relied upon the judgment in the case of S.L. Lumax Ltd. Vs. Commissioner of Central Excise, Chennai – 2016 (337) ELT 368 (Mad.) wherein identical set of facts have been discussed.

6. From the above, we are of the view that since the appellant has rectified the mistake of taking CENVAT credit as well as depreciation under Income Tax Act, the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex