CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.41632 of 2016
[Arising out of Order-in-Appeal No.36/2016 dated 22.07.2016 passed by the Commissioner (Appeals-I), Chennai]

M/s.Roca Bathroom Products (P) Ltd. **Appellant**
223-226, Matsya Industrial Area,
Alwar 301 030.

Vs

The Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040

APPEARANCE:

Shri Jaishankar, Advocate
For the Appellant

Shri R. Rajaraman, Assistant Commissioner (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 21.09.2022
Date of Decision: 21.09.2022

FINAL ORDER No. 40322 / 2022

Brief facts of the case are that appellant is engaged in the manufacture of Sanitary Wares falling under Chapter 6910 and 6911 of the First Schedule to CETA, 1985. They were availing the facility of cenvat credit of service tax paid on various input services. On verification of accounts, it was noticed that appellants have availed cenvat credit on 'Outdoor Catering Services' for the period January 2010 to April 2015. The Department was of the view that the credit availed on such services is not eligible. Show cause notice was issued proposing to disallow the credit and for recovery of the same along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. Aggrieved by such order, the appellants preferred appeal before the commissioner (Appeals) who upheld the same. Hence this appeal.

2. On behalf of the appellant, Ld. Counsel Shri Jaishankar appeared and argued the matter. He submitted that for the period prior to 01.04.2011 the appellant would be eligible for credit as the amendment excluding 'Outdoor Catering Services' was brought forth only after 01.04.2011. To support his argument, he relied upon the decision in the case of *Sharada Motors Industries Pvt. Ltd.* – 2019-TIOL-2592-CESTAT MAD; *Chennai Containers Terminals Pvt. Ltd. Vs Commissioner* - 2022 (58) G.S.T.L. 359 (Tri.-Chennai).

3. Ld. Counsel was fair enough to submit that after 01.04.2011, the appellant is not eligible for credit on the basis of recent decision of the Hon'ble Supreme Court in the case of *Toyota Kirloskar Motors P. Ltd. Vs Commissioner of Central Tax* – 2021 (55) G.S.T.L 129 (SC). In addition, he submitted that appellant has already paid the entire amount as well as interest towards the said services. The same has to be considered for adjusting the demand.

4. The next argument put forward by the Counsel is that the issue is interpretational in nature and the appellant had availed credit only on *bona fide* belief that they are eligible for credit. The issue had reached the Hon'ble Supreme Court and therefore the appellant cannot be found fault for availing the credit. Further, there is no evidence brought out by the department that there is suppression of facts with intent to evade payment of duty. He relied upon the decision of the Tribunal in the case of *TIDC India Ltd. Vs CGST & Central Excise, Chennai North – 2022-TIOL-339-CESTAT-MAD* to argue that penalty requires to be waived. He prayed that the appeal may be allowed accordingly.

5. Ld. A.R. Shri R. Rajaraman supported the findings in the impugned order.

6. Heard both sides.

7. The issue is whether the appellant is eligible for credit on 'Outdoor Catering Services' for the period from January 2010 to April 2015. The amendment was brought forth in the definition of "input services" with effect from 01.04.2011 which excluded services in the nature of outdoor catering services. Further, the Hon'ble Supreme Court in the case of *Toyota Kirloskar Motor Pvt. Ltd*. (supra) had held that credit is not eligible after 01.04.2011. From the foregoing, I hold that appellant is not eligible for credit after 01.04.2011. Further, for the period prior to 01.04.2011, the appellant is eligible for credit.

8. Ld. Counsel has argued to set aside penalty also. It is obvious that the issue is interpretational in nature as the same had travelled upto the Apex Court wherein the Apex Court has held that after 01.04.2011 the credit is not eligible. Further, there is no positive evidence adduced by the department that the appellant intentionally suppressed facts to evade payment of duty. I hold that penalty imposed requires to be set aside which I hereby do.

9. From the forgoing, the impugned order is modified to the extent of allowing credit for the period prior to 01.04.2011. The demand for the period after 01.04.2011 is upheld. The appellant is eligible for adjusting the amount that has already been paid. Penalty imposed is set aside. Appeal is partly allowed in above terms with consequential relief, if any, as per law.

(Dictated and pronounced in court)

(**SULEKHA BEEVI C.S.**)
MEMBER (JUDICIAL)

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