CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.I

EXCISE APPEAL No.41092 of 2014

(Arising out of Order-in-Appeal No.8/2014 (M-II) (D) dated 07.02.2014 passed by Commissioner of Central Excise (Appeals), Chennai – II Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam,Chennai-34)

M/s. Harita NTI Limited **...Appellant**
Industrial Estate,
Ambattur,
Chennai – 600058

Versus

The Commissioner of Central Excise **...Respondent**
Chennai – II Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

Shri. Bharath R. Srinivas, Advocate
For the Appellant

Shri. Harendra Singh Pal, Assistant Commissioner
For the Respondent

CORAM:

HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)

HON'BLE SHRI M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 05.02.2024
DATE OF DECISION: 16.02.2024

FINAL ORDER No.40163/2024

ORDER: Per SHRI P. DINESHA

This appeal is filed by the tax payer against the Order-in-Appeal No.08/2014 (M-II) (D) dated

07.02.2014, passed by the Commissioner of Central Excise (Appeals), Commissionerate, Chennai.

2. Shri Bharath R. Srinivas, Learned Advocate appeared and argued for the Appellant.

3. Shri Harendra Singh Pal, Learned Assistant Commissioner appeared for the Revenue.

4. It is the case of the appellant that the Original authority had allowed CENVAT credit availed by the appellant in so far as security services was concerned, but in the impugned order, the lower Appellate authority has accepted the case of the revenue to hold inter-alia that Rule 6 of CENVAT Credit Rules, 2004 (CCR) would be applicable only in respect of common goods, that is to say, the credit availed by the appellant on the security services provided for the factory premises as well as trading premises is covered under Rule 6(5) of the CENVAT Credit Rules, 2004 since the appellant had not maintained separate books of account for the common input services.

5. Per Contra, the Learned Assistant Commissioner supported the findings of the lower authorities.

6. Having heard both sides, we find that the only issue to be decided by us is, whether first appellate authority correct in modifying the OIO, by

disallowing credit availed by the appellant on security services?

7. We have perused the documents placed on record including the Show Cause Notice filed during the course of hearing wherein, the Original authority had initially apprehended that the appellant had availed ineligible input service credit on the services in contravention to Rule 2(l) and Rule 3(l) of CENVAT Credit Rules, 2004, for the reason that they were in no way connected with the manufacture either directly or indirectly, for which reason it was proposed therein to demand ineligible credit availed by them. The appellant appears to have filed a reply which was considered by the Original authority during adjudication and thereafter, vide Order-in-Original No.15/2010 dated 13.07.2010, the adjudicating authority has come to the conclusion that in so far as the security services for their factory and trading premises was concerned, the said services was directly connected with their business and hence, the appellant was entitled for the credit of service tax paid and consequently, he was allowed the credit so availed towards the security services.

8. From the conjoint reading of Show Cause Notice and Order-in-Original, we find that the scope of doubt and the adjudication, what was required to be explained by the appellant was limited to the fact

whether the said service was in any way connected with the business of the appellant, which on adjudication was answered in favour of the appellant.

9. From the impugned order, we find that the feeling aggrieved, the department filed appeal before the FAA, i.e., the Commissioner (Appeals) challenging the above finding given in OIO and it appears that the revenue also made an issue of non-maintenance of separate books of accounts in so far as the common input services in respect of both the premises were concerned, which was never addressed either in the Show Cause Notice or in the Order-in-Original. But however, no grounds of appeal urged before the FAA is placed before us in this regard.

10. From the impugned order, we find that the First Appellate Authority (FAA) has analysed the scope of Rule (3) of CENVAT Credit Rules vis-à-vis, the activities carried on by the appellant. The First Appellate Authority (FAA) has observed that with regard to the credit of goods, the appellant was neither a manufacturer/producer nor a provider of taxable output service, since at the material time trading was neither taxable nor exempted. Moreover, according to the First Appellate Authority (FAA) exempted goods would refer only to the goods

manufactured by the appellant, on which no duty was payable, but here the appellant had only bought and sold goods instead of those which were manufactured by it. In view of the above discussions, the First Appellate Authority (FAA) has concluded that the appellant was not entitled to credit attributable to credit of goods by virtue of Rule 3 which restricts and allow credit only to the manufacturer of goods or to the provider of output services.

11. From the perusal on the grounds of appeal and the written submissions filed before us, we find that the appellant has contended that the impugned services was not used exclusively in the manufacture of exempted goods or provision of exempted services and that the same was used by the appellant as a common service for its manufacturing as well as trading activities, which merits consideration. Further, the scope of exempted services within the meaning of Rule 2(e) was amended with effect from 01.04.2011 only, which provides that the trading activities were not included in the definition of exempted services and hence, the usage of part of the security services for the activity of trading prior to 01.04.2011 would not be construed as towards the provision of exempted services alone. Moreover, it is not the case of the

revenue that ‘security service’ was used exclusively in the manufacturing unit or used exclusively in the trading unit of the appellant, but the appellant has all along claimed that the said service was used as a common service in both the units. The amendment to Rule 2(e) was not applicable since the period under dispute is from June 2007 to January 2009 and hence, it is difficult to construe trading activity as an exempted service and that the service in question cannot be held to have been used in the provision of exempted service alone.

12. In view of the above discussions, we are of the clear view that the impugned order of the First Appellate Authority is unsustainable in law for which reason the same deserves to be set aside.

13. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in court on 16.02.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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