CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/59624/2013-EX [SM]

[Arising out of Order-in-Appeal No.121/RPR/I/2013 dated 15.05.2013 passed by the Commissioner (Appeals-I), Customs, Central Excise and Service Tax, Raipur-I]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Pankaj Oxygen Limited …Appellant

Vs.

CCE, Raipur … Respondent

Present for the Appellant : Shri.Manigopal Das, Rep.
Present for the Respondent: Smt.Kanu Verma Kumar, Commr. D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28/03/2016

FINAL ORDER NO. ____56430/2016____

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 15.05.2015 passed by the Commissioner (Appeals)-I, Customs, Central Excise and Service Tax, Raipur.

2. The brief facts of the case are that during the disputed period April, 2009 to February, 2012, the appellant had paid service tax under reverse charge mechanism in terms of Rule 2 (1) (d) (v) of the Service Tax Rules, 1994. The Service Tax liability of 100% in respect of freight charges was paid by the appellant and the amount paid as service tax was taken as Cenvat Credit. Taking of entire amount as cenvat credit instead of 25% of the gross amount charged by the goods transport agency was objected to by the Central Excise Department. The SCN issued in this regard culminated in the adjudication order dated 24.08.2012, wherein cenvat credit of Rs.55,799/- was confirmed and equal amount of penalty was confirmed against the appellant. The adjudication order was upheld by the ld. Commissioner (Appeals) vide the impugned order. Hence this present appeal is before the Tribunal.

3. Heard the ld. Counsel for both the sides and perused the records.

4. The fact of Payment of service tax on the whole amount of freight charges by the appellant is not in dispute. The only

dispute in this case is that the appellant was entitled to take cenvat credit of 25% of the gross amount charged by the goods transport agency and not on the entire amount of service tax paid by the appellant. Since the fact is not under dispute that the service tax paid by the appellant was taken as cenvat credit, denial of such credit is not in confirmity with Rue 3 of the Cenvat Credit Rules, 2004, which mandates that service tax paid on input service received by the manufacturer of final product is eligible for cenvat credit.

5. In view of the statutory provisions, I am of the considered opinion that denial of cenvat credit to the appellant is not proper and justified. Thus, I do not find any merits in the impugned order, and accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and Pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita