IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 23/05/2017.
DATE OF DECISION : 23/05/2017.

Excise Appeal No. 50977 of 2014

[Arising out of the Order-in-Original No. JAI/EXCUS/001/COM/112/13-14 dated 30/12/2013 passed by The Commissioner of Central Excise, Jaipur – I.]

M/s Dinesh Irrigation Pvt. Ltd. Appellant

Versus

CCE, Jaipur – I Respondent

Appearance

Shri R. Santhanam, Advocate – for the appellant.

Ms. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53415/2017 Dated : 23/05/2017

Per. Anil Choudhary :-

The appellant – M/s Dinesh Irrigation Pvt. Ltd. is in appeal against demand raised under Rule 14 in the Cenvat Credit Rules, 2004, with equal penalty.

2. The learned Counsel states the allegation in the show cause notice is that during the period April 2007 to March 2008 and October 2008 to March 2009 the assessee did not maintain separate account for receipt and consumption of input for manufacture of dutiable product and exempted goods. He further stated that details of clearance of exempted goods, during the relevant period was called for from the appellant and through the letter dated 10/02/2012, appellant furnished details. Accordingly, based on such figures, the demand was proposed under Rule 6 (3) of Cenvat Credit Rules through the show cause notice dated 30th April, 2012, invoking extended period of limitation.

3. The show cause notice was adjudicated on contest and the proposed demand of Rs. 1,21,20,085/- confirmed alongwith interest and further equivalent amount of penalty was imposed under Rule 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC of the Act.

4. Being aggrieved with the order the learned Counsel Shri Santhanam, for the appellant urges that they have maintained separate account for the receipt of inputs. So far, the input services are concerned he draws reference to letter dated 25/11/2013 written to the Superintendent, mentioning that during the financial years 2007-2008 and 2008-2009 they are maintaining separate receipts consumption and inventory for inputs meant for dutiable final product and exempted final

product respectively and took the credit for those inputs which are used in dutiable final products. Further, as regards input services they have taken credit of Rs. 11,792/- in their RG-23A Pt. II credit on input service – insurance. Hence, on advice by the auditor they reversed the said amount vide entry dated 25th August 2009. It was further stated they were not taking service tax on GTA for inward transport during the year 2007-2008 and 2008-2009 accordingly no need for maintaining separate record for input services used for manufacturing of exempt goods. He further stated that as advised by the auditor they took service tax credit only of such input services used for manufacturing of dutiable products for Rs. 28,187/-. The learned Counsel further points out from the impugned order that the learned Commissioner have mentioned para 20 of the order that – as per the report received from the Assistant Commissioner, referring to the letter dated 25/11/2013 of the assessee, as mentioned herein above, it was stated that on verification of ER-1 return, the Range Officer found that the assessee has taken Cenvat credit of input service of Rs. 71,224/- + education cess of Rs. 1,425/-. As per the said verification report the assessee have never disclosed of facts regarding non-maintenance of separate record of input service used in the manufacture of dutiable and exempted goods. The learned Commissioner further observes that it appears to an extent the submission of the appellant are correct, as the Divisional office has confirmed they have maintained separate records of input. However, the fact remains that the credit of insurance and transport agency service has also been availed by the assessee for which separate records have not been maintained. The learned Counsel urges there are factual errors in the impugned orders and further learned Commissioner never provided of the copy of the report received from the learned Assistant Commissioner, received and after the show cause notice was issued, resulting into mis-carriage of justice and lack of proper opportunity of hearing. Accordingly, he prays for allowing the appeal with consequential relief.

5. The learned AR have relied upon the impugned order for the Revenue.

6. Having heard the submissions we are satisfied that there are factual errors in the impugned order, regarding fact of taking of Cenvat credit. Further, how the amount of Rs. 71,224/- with cess, have been computed is also not evident. Further, non-providing of a copy of report received from the Assistant Commissioner at the back of appellant have caused prejudice to the appellant and did not get the proper opportunity. In these set of facts, we allow the appeal by way of remand by setting aside the impugned order. We direct the learned Commissioner to provide the copy of the report of Assistant Commissioner relied upon by him in the impugned order and other documents, if any, relied upon by the learned Commissioner in the impugned order and thereafter the appellant will get opportunity to file a proper

reply to the show cause notice and after hearing the appellant, the learned Commissioner shall pass the fresh order in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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