IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –III

**Excise Appeal No.E/50002/2017 Ex. SM]**

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL-I/ 184/ 2016-17 dated 19/10/2016 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut]

M/s.Tirupati LPG Industries Ltd. …Appellant

Vs.

C.C.E & S.T. Dehradun … Respondent

Present for the Appellant : Mr. Rajesh Gupta, C.A.
Present for the Respondent: Mr. G.R. Singh, D.R..

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

**Date of Hearing/Decision: 16/06/2017**

**FINAL ORDER NO. ___54386/2017__**

**PER: S.K. MOHANTY**

This appeal is directed against the impugned order dated 27.01.2015 passed by the Commissioner (Appeals), Central Excise, Meerut.

2. Brief facts of the case are that the appellant availed area-based exemption under Notification No.50/2003-CE dated 10.06.2003. Upon completion of the period mentioned in the said Notification, the appellant started paying Central Excise duty with effect from 05.01.2014. During the period

04.04.2013 to 12.12.2013, the appellant procured the capital goods on payment of Central Excise duty. On 05.01.2014, the appellant availed 50% of cenvat credit and the balance cenvat credit was availed on 01.04.2014. Availment of cenvat credit was denied by the Department on the ground that at the time of procurement of the capital goods, the assessee was availing the exemption provided under Notification dated 10.06.2003. Further, cenvat credit taken on service tax paid on godown rent was denied on the ground that the said service is not confirming the definition of input service inasmuch as, said service was utilized by the appellant beyond the place of removal. The Department has denied cenvat credit placing reliance on the Larger Bench decision of this Tribunal in the case of Spenta International Ltd. vs. CCE - 2007 (216) ELT 0133 (Tri. LB).

3. The ld. Advocate appearing for the appellant submits that though the capital goods were installed during the period of availment of exemption, but those capital goods were also used for manufacture of the excisable goods, on which, duty was payable w.e.f. 04.01.2014. Thus, he submits that cenvat benefit cannot be denied to the appellant. To support such stand, the ld.Advocate has relied on the judgement of Hon’ble Madras High Court in the case of Kaleesuwari Refinery Pvt. Ltd. vs. CESTAT – 2016 (340) E.L.T. 632 (Mad.) and the decision of this Tribunal in the case of CCE vs. Pepsico India Holdings Ltd.

– 2015 (324) E.L.T. 0175 (Trib. Mub.). With reference to the godown rent, the ld. Consultant submits that the rent was paid in respect of the premises situated at the adjacent plot to the factory, where the excisable goods were stored for onward movement to the buyers. Thus, the said premises should be considered as part of the factory and serviced tax paid on godown rent should be available as cenvat credit.

4. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order and submits that at the time of installation of the capital goods in the factory, since the finished goods manufactured were entirely exempted from payment of duty, the case of the appellant falls under the embaro created in Rule 6 (4) of the Cenvat Credit Rules, 2004 and thus, benefit thereof cannot be available to the appellant. As regards service tax on godown rent, he submits that the premises situated away from the factory cannot be considered as place of removal for the purpose of cenvat benefit.

5. Heard both sides and perused the records.

6. Sub Rule (4) of Rule 6 of the Cenvat Credit Rules mandates that no cenvat credit shall be allowed on capital goods, which are used exclusively in the manufacture of the

exempted goods. In the present case, it is an admitted fact on record that during the time of procurement of the capital goods and their installation within the factory, the appellant was availing the exemption provided under Notification No. 50/2003-CE dated 10.06.2003. Since at the time of installation, the final products were exempted from payment of duty and no other goods were manufactured, which attracted payment of duty, as per provisions of sub rule (4) of Rule 6 ibid, Cenvat benefit is not permissible to the appellant. The Larger Bench of this Tribunal in the case of Spenta International Ltd. has held that cenvat eligibility is to be determined with reference to the dutiability of the final product on the date of the receipt of the goods or the date of utilization/eligibility of 50% credit. Since relying on the said decision, the Original Authority has denied the cenvat benefit, I do not find any infirmity in such findings of the original authority.

7. With regard to payment of service tax on the godown rent, I have perused the grounds submitted by the ld. Consultant. The same clearly reflect that the godown was taken on rent. Since the godonwn was not a part of the registered factory premises, the same cannot be considered as "place of removal" for the purpose of consideration for cenvat credit under Rule 2 (l) ibid.

8. Thus, I do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

[Dictated and pronounced in the Open Court]

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

Anita