IN THE 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/50015/2017 CU- SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS – 001-APP – 125-16-17 dated 02.06.2016 passed by the Commissioner (Appeals-I), Customs & Central Excise & Service Tax, Bhopal (M.P.)

Arvind Bhai Patel, HUF …Appellants

Vs.

C.C.E & S.T., Bhopal … Respondent

Service Tax Appeal No.ST/ 50016 /2017 CU- SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS – 001-APP – 124-16-17 dated 02.06.2016 passed by the Commissioner (Appeals-I), Customs & Central Excise & Service Tax, Bhopal (M.P.)

Arvind Bhai Patel, HUF …Appellants

Vs.

C.C.E & S.T., Bhopal … Respondent

Service Tax Appeal No.ST/50017/2017 CU- SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS – 001-APP – 127-16-17 dated 02.06.2016 passed by the Commissioner (Appeals-I), Customs & Central Excise & Service Tax, Bhopal (M.P.)

Naina Ben Patel …Appellants

Vs.

C.C.E & S.T., Bhopal … Respondent

Present for the Appellant : Mr Sahsh Kumar Goswami, Advocate
Present for the Respondent: Mr..K.V. Kumar, D.R.

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

Date of Hearing/Decision: 28/06/2017

FINAL ORDER NO. 54648-54650/2017

PER: S.K. MOHANTY

The appellants have filed these appeals against the impugned order dated 02.06.2016 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax , Bhopal. This is the second round of litigation before the Tribunal. In the initial round, the Tribunal vide Final order No.A/52302/2014-SM (BR) dated 20.05.2014 has remanded the matter for denovo adjudication to the adjudicating authority with the direction to the appellant to provide further necessary documents as requested by the Department vide letter No. ST.20/03/Audit Note/156-12 / SGR-II/2012 dated 30.01.2014. Pursuant to the direction of the Tribunal, the original authority took up the *de novo* adjudication proceedings and passed the order dated 02.12.2014. In the said order, it has been specifically mentioned that the appellant has not complied with the direction of the Tribunal in submission of the documents. The relevant paragraphs in the adjudication order are extracted herein below:-

> 11. I have gone through the entire case records and have taken in to consideration the oral and written submissions of the Noticee deposed & produced at the time hearing. While deciding the case it is pertinent to refer the Final Order dated 20/05/2014 passed by Hon'ble CESTAT in the case of this Noticee on the same issue for the earlier period. It has specifically been directed that the appellants will provide further necessary documents as requested by department vide their letter No.ST-20/03/Audit Note/156-12/SGR-II/2012 dated 30/01/2014.The letter of the department speaks about requirement-"the purpose for which the area for installation of common D.G set has been taken on rent from M/S Millennium Developers Pvt. Ltd. and the purpose of installation of DG set. Copy of Agreement entered with M/S Millennium Developers Pvt. Ltd as well as the service receiver to whom immovable property has been rented out against which Cenvat Credit taken is being utilized for payment od service tax.
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> 12. It is to be noted are that the Noticee are required to fulfill the requirement as desired in the department's letter supra. In-stead of doing this the Noticee appear to question the wisdom of the adjudicating authority. They are deviating from complying the direction of the Hon'ble CESTAT. In their reply dated 29/10/2014 they have stated that in their case the necessary document is only and only the agreement of immovable property given on rent to M/S CREDIT Sui-cee Securities Pvt. Limited, Mumbai.By not producing the documents related to M/S Millenium Developers Pvt Ltd they have sidelined the direction of the Hon'ble CESTAT and have advanced another logic that they are not requiring separate agreement with M/S Millennium Developer of Mumbai as per Law. Thus, I find that Noticee have failed to comply with the specific direction of the Hon'ble CESTAT by not producing the required document evidencing payment of service tax against which debit note has been issued for the amount of ₹ 1,08,037-.I am also of the view the that debit note can not be considered a valid document to avail cenvat credit. Hence contravention of the provisions of Rule 9(1) of the Cenvat Credit Rules, 2004 is proved on record and the credit availed by the Noticee is liable to be disallowed.

2. On the basis of above findings, the original authority has confirmed the demand against the appellant. On appeal, the ld. Commissioner (Appeals) has also upheld the adjudged demand on the ground that the direction of the Tribunal vide order dated 20.05.2014 has not been complied with by the appellant.

3. Heard both sides and perused the records.

4. On going through the appeal records, I find that both the authorities below have confirmed the demand on the ground that the direction of the Tribunal has not been complied with by the appellant in totality. Since the present appeal is for the limited purposes i.e. for submission of the relevant documents, which admittedly were not produced by the appellant before

the adjudicating authority, I am of the view that the impugned order passed by the ld. Commissioner (Appeals) cannot be interfered with at this juncture.

5. Therefore, I do not find any infirmity in the impugned order. Accordingly, the appeals filed by the appellants are dismissed.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita