CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 19.07.2017

Appeal No. E/59143-59144/2013-EX[DB]

[Arising out of the Order-in-Appeal No. 58-59/CE/DLH/2013 dated 30.04.2013, passed by the Commissioner of Central Excise, Delhi]

M/s. Essco Sanitation
Shri Rajesh Mehra … Appellant

Vs.

C.C.E. Delhi-I ... Respondent

Appearance:

Present Shri S.K. Pahwa, Shri Rohan Pahwa, Advocate for the appellant
Present Shri R.K. Mishra, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 55501-55502 /2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the order in Appeal No. 58-59/2013 dated 30.04.2013.

2. In the present appeals there are two issues involved as follows:

i) The cenvat Credit of Rs.3,74,201/- which has been denied because the same had been taken on the strength of the debit notes.

After hearing both the sides and perusal of the record, it appears that identical issue has come up in the case of Jaguar and Co. Ltd. Vs. CCE Delhi vide Final order no. 52188-52191/2016 dated 14.06.2016 wherein the Tribunal has observed as follows:

"As regards the second issue i.e. availment of cenvat credit of Service tax paid by the consignment agent under the service on the basis of debit notes raised by them, we find that the issue stands decided in the same appellants case vide Final Order Nos. A, 52041/2015-SM (BR) dated 23.6.2015; A/51656-51657/2014-SM(BR) dated 04.04.2014 and A/54830/2014-SM(BR) dated 30.10.2014. Inasmuch the said issue stand decided, the confirmation of demand in the said ground would also not sustainable."

By following our earlier decision we set aside the impugned order regarding this issue and allow the claim of the appellant.

ii) The second issue is demand for Central excise duty amounting to Rs.29,54,674 which was alleged to have been short paid owning to the difference in assessable value shown in ER-1 returns and sale value shown in their Balance sheet as well as tax return. During the course of argument the Ld. Counsel submitted that same issue has come up before the Tribunal in the case of Jaguar and Co. Ltd. (Supra) wherein it was observed as follows:

"6.As is seen from the above, it stands held by Hon'ble Supreme Court that even after the amendments in section 4, the cash discounts have to be taken into account for arriving at the price on which duty is required to be paid. Though the appellants have taken a categorical stand before

the authorities below that the complete reconciliation was being made by them at the end of manufacturer, during the period involved in the present appeal, and wherever the cash discounts offers were not availed by the customers, they were paying duty, we, at this point of time, are of the view that reconciliation has become the secondary issue in view of the legal issue having been settled in favour of the assessee. If the cash discounts offered by the appellant, are required to be considered and the assessable value has to be recalculated based upon such offers of discounts, in terms of the Supreme Court decision, the present demand of duty on the ground that such cash discounts do not stand availed by the appellants' customers in most of the cases, falls to the ground. As such, on this count, we are of the view that demand cannot be confirmed against the appellant."

5. The Ld. Counsel further submits that the difference as observed by the lower authorities between the central excise duty ER-1 returns and as well as tax returns / balance sheet has arisen due to the reason that for calculating central excise duty, cash discount was shown to the customers and the same was denied. But in the sales tax returns no cash discount was shown.

6. By considering totality of the facts of the case and by keeping in mind the ratio laid down in the above mentioned case, we modify the impugned order and remand the matter back to the adjudicating authority to examine the discrepancy / re-conciliation between the ER-1 returns and sales tax returns as stated above and decide the issue afresh but by providing

reasonable opportunity to the appellant. Fresh evidence, if any may be admitted as per law.

7. In the result, appeal filed by the appellant is partly allowed

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu