IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Excise Appeal No.E/52868/2015-EX [DB]

[Arising out of Order-in-Original No.JAI-EXCUS-001/COM-006-156-16 DATED 30.04.2015 passed by the Commissioner, Central Excise, Jaipur-I]

M/s. Shree Cement Ltd. …Appellant

Vs.

C.C.E. & S.T., Jaipur-II … Respondent

Present for the Appellant : Shri M.P. Devnath, Advocate
Present for the Respondent: Shri S.K Bansal, D.R.

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

Date of Hearing / Decision : 29/08/2017

FINAL ORDER NO. 56608/2017

PER: B.RAVICHANDRAN

The appeal is against the Original Order dated 30.04.2015 of Commissioner of Central Excise, Jaipur. The appellants are engaged in the manufacture of clinker and cement liable to Central Excise duty. They were availing credit of inputs and input services in terms of Cenvat Credit Rules, 2004. The dispute in the present appeal relates to the eligibility of the appellant to take credit on input service "transport of goods by railways". The original authority denied such credit on the ground that the appellants did not provide required documents in terms of Rule 9 of Cenvat Credit Rules, 2004. He held that the amendment made in the said Rule by way of insertion of clause (fa) under the said Rule was not applicable for the period prior to August, 2014. On this ground the credits claimed by the appellant on transport of goods by Railways was denied.

2. The ld. Counsel contested the findings of the Original Authority on the ground that they have proper document, which is clearly covered by sub-clauses (e) & (f) of Rule 9 (1) of the CCR, 2004. Even without reference to sub-clause (fa) inserted in 2014, the appellants are rightly eligible for credit. Further, the ld. Counsel submitted that the original authority did not appreciate the facts of the case and various documents submitted by the appellant and did not also examine the provisions of Rule 9 (2), resulting in wrongful denial of credit to the appellant. No finding was recorded on the available documents, which are sufficient to substantiate their claim for cenvat credit on input service.

3. The ld. A.R. submitted that the service tax certificate for transportation of goods by Railway is a document on which credit can be allowed only with effect from 27.08.2014 after the introduction of sub-clause (fa) under Rule 9 (1). As such,

the original authority was correct in not taking into consideration such certificate for the period prior to that date. Regarding availability of other substantial documents, the ld. A.R. submitted that the same is subject to verification in terms of Cenvat Credit Rules.

4. We have heard both the sides and perused the appeal records. The appellants did avail the input service of transport of goods by Rail. They have also discharged service tax on the same. The dispute in the present appeal relates to their eligibility to take credit based on documents, which the Revenue contents are not as per the provisions of Rule 9. Contesting the same, the appellants submitted that the documents are clear and specific and the service provider has given both individual documents as well as comprehensive consolidated certificates of discharging service tax on these input services. Even otherwise, the appellants pleaded that the Original Authority should have examined provisions of Rule 9 (2) and then on satisfying that all particulars required for taking credit are available in the basic documents submitted by the appellant, the credit should have been allowed. We are in agreement with the submissions made by the appellants. The appellants are strongly contending that without recourse to the newly inserted clause (fa) they do have all required documents to substantiate their claim for credit on the said input service. We find the original authority did give a specific and clear

finding on the documents mentioned at clause (e) and (f) of Rule 9 (1). Further, the available documents as submitted by the appellant are to be examined in terms of provisions of Rule 9 and more specifically Rule 9 (2) read with proviso thereto. In case, all the essential details required for availing credit, as per the said rule are available in the documents submitted by the appellant, there can be no reason for denial of credit on any other minor procedural lapse, if any. Discretion provided in the proviso to Rule 9 (2) has also to be examined.

5. In view of the discussion and analysis, we find that the impugned order cannot be sustained and accordingly, the same is set aside. The original authority should examine the claim of the appellant for the credit on the said input services based on the documents submitted by the appellant and also to examine the need to apply the provisions of Rule 9 (2) proviso to the present case. Since substantial credit is held in dispute, it will be advisable for original authority to take a decision, afresh, within 3 months of receipt of this order. Adequate opportunity shall be provided to the appellant to present the documents and defence in their favour. The appeal is allowed by way of remand.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita