CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - SM
COURT - I

Appeal(s) Involved:

ST/31195/2017-SM

(Arising out of Order-in-Appeal No. HYD-EXCUS-004-APP-0162-17-18 and HYD-EXCUS-004-APP-0162-17-18 dated 31/07/2017 passed by Commissioner (Appeals-II) GST & Central Excise Hyderabad)

R.K. Electric Automation Ltd Appellant(s)

Versus

Commissioner of Central Tax, Medchal Respondent(s)

Appearance:

None for the Appellant.

Mr Guna Ranjan, A.R. for the Respondent.

CORAM:

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 15/05/2018

Date of Decision: 22/05/2018

Final Order No. A/ 30584 /2018

[Order per: P. Venkata Subba Rao] .

When this matter was called nobody appeared for the appellant. Shri Gunaranjan learned A.R. appeared on behalf of the department. I find from the records that the matter was earlier listed on 12.02.2018, 03.04.2018, 25.04.2018 and this is the fourth hearing and the appellant has not availed the opportunity afforded to them to be heard. I therefore proceed to decide the matter on merits even in the absence of representation from the appellant

2. The appellants are engaged in the manufacture of electric panel boards, and in providing some services and also in trading activity. Trading is an exempted activity under the service tax. They did not maintain separate accounts in respect of the exempted and taxable services as required under Rule 6(3) of the CENVAT Credit Rules. They also did not reverse the credit in terms of this rule. When this matter was pointed out, they reversed an amount of Rs 11,25,660/- in terms of Rule 6 (3). A show-cause notice was issued and adjudicated by the lower authority confirming demand of CENVAT credit of Rs 11,25,560/- and appropriating the amount already paid against this amount. He also ordered recovery of interest under Section 75 of the Finance Act and imposed a penalty.

3. Aggrieved, the appellant appealed to Commissioner (Appeals) who partly modified the order of the lower authority. It is the contention of the appellant that while so arriving, the learned Commissioner (Appeals) has invoked provisions of Rule 6 (3A)(e) which was never mentioned in the show-cause notice and hence, the order-in-appeal needs to be set aside to the extent of demanding interest under this rule.

4. The learned A.R. reiterated the arguments in the order-in-original and order-in-appeal and argued that the appeal needs to be dismissed.

5. I have gone though the order-in-original and the order-in-appeal. Para 13 of the order-in-appeal referred to Rule 6 (3A)(e) of the CENVAT Credit

Rules to charge interest and modifies para 29(iii) of the order-in-original accordingly. Accordingly, I find from the order-in-original that Rule 6(3A)(e) was not referred to in it and it does not appear that appellant was issued a notice invoking this rule. The appellant should be given an opportunity to defend himself against the provisions of this rule and the interest applicable there-under. I therefore find that the order-in-appeal has gone beyond the show-cause notice and remand the matter back to the Commissioner (Appeals) for denovo adjudication after following the principles of natural justice.

(Order pronounced in open court on 22.05.2018)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

Neela Reddy