CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SMB
Court – I

Appeal No. ST/30844/2018

(Arising out of Order-in-Appeal No. GUN-EXCUS-000-APP-006-18-19, dated 13.04.2018 passed by Commissioner of Central Tax (Audit), Visakhapatnam)

SH Rao **.....Appellant(s)**

Vs.

Commissioner of Central Tax,
Guntur – G S T **.....Respondent(s)**

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri V.R. Pavan Kumar, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. P. Venkata Subba Rao, Member (Technical)

Date of hearing: 06/11/2018
Date of decision: 06/11/2018

FINAL ORDER No. A/31466/2018

[Order per: P. Venkata Subba Rao]

This appeal is directed against Order-in-Appeal No. GUN-EXCUS-000-APP-006-18-19, dated 13.04.2018.

2. Heard both sides and perused the records.

3. The appellant herein was providing digitization of records and database services and was liable to pay service tax and he was also availing the facility of CENVAT credit under CENVAT Credit Rules, 2004. During the course of audit, it was found by the department that the assessee has taken irregular CENVAT credit to the extent of Rs. 42,750/- on some services he has also availed an excess amount of Rs. 4,452/- as credit on some other services over and above amount mentioned in the invoices. Show cause notice was issued to the appellant proposing to recover these two amounts along with interest and it was also proposed to impose a penalty under Section 78 upon the appellant. Several other amounts were also proposed to be recovered irregularly availed CENVAT credit. The appellant did not dispute irregular availment of CENVAT credit and had reversed the same along with interest except to the extent of the above two credits of Rs. 42,750/- and Rs. 4,452/-. The lower authority in this Order-in-Original discussed the facts in detail and ordered recovery of these two amounts along with appropriate interest and imposed a penalty equal to these two amounts under Section 78 of Finance Act, 1994 for irregular availment of CENVAT credit with intent to evaded payment of tax. Aggrieved, the appellant preferred an appeal before the First Appellate Authority who dismissed their appeals and upheld the Order-in-Original of the lower authority. Hence this appeal.

4. Learned Counsel for the appellant submits that the appellant was a small time operator without adequate knowledge of the service tax procedures and CENVAT Credit Rules and therefore had taken CENVAT credit wrongly on several inputs including the two

amounts in dispute. On being pointed he had reversed the amounts along with interest except the interest on these two amounts. The appeal has been filed seeking that the interest under Section 75 and the penalty under Section 78 equal to the demand may also be set aside. They have not disputed the recovery of the CENVAT credit. Insofar as the amount of interest is concerned, it was the contention in their appeal that they had adequate balance in their credit and hence no interest was liable to be paid because they had not utilized the disputed amounts. Learned Counsel fairly concedes that this position is not correct and they had, in fact, utilized the credit and therefore were liable to pay interest. Learned Counsel submits that there is no intention to evaded payment of duty and there was only a genuine mistake on behalf of the appellant and hence no penalty may be imposed on the appellant. However, he prays that the entire demand was based on the audit of the transactions already recorded in the books of accounts of the assessee and therefore as per the proviso to Section 78 as applicable during the relevant period only 50% of the service tax amount is liable to be imposed as a penalty and they may be given the benefit of this proviso.

5. Learned Departmental Representative agrees with the facts of the case narrated by the Learned Counsel and produces before the Bench a letter from the Office of the Commissioner of Central Tax, CGST Commissionerate, Guntur confirming that they had verified the records of the appellant the wrongly availed the CENVAT credit of Rs. 42,750/- and Rs. 4,452/- had been utilized by the assessee for payment of tax liabilities during the period and they had not

maintained any credit balance equivalent to the irregular credit taken during the period in dispute. In fact, the assessee had shown zero closing balance of service tax in their ST-3 returns. He, therefore, submits that the appellant was liable to pay interest as they had wrongly utilized the CENVAT credit. He further argues that in so far as these two amounts were concerned, the appellant had taken CENVAT credit in violation of the rules and had evaded payment of duty to the extent. Therefore they are fully liable for penalty under Section 78 of the Finance Act, 1994. However, he concedes that the appellant was covered by the proviso to Section 78 is applicable during the relevant period inasmuch as the irregular availment of CENVAT credit by the appellant and consequent evasion of payment of service tax was noticed by an audit of the books of accounts maintained by the appellants themselves.

6. I have considered the arguments on both sides and perused the records. There is no dispute regarding the entitlement of CENVAT credit. The appellant was only disputing the interest payable on them on the ground that they had not utilized the same the records as verified by the Commissioner put so order wise. The Learned Counsel for the appellant also agrees that the disputed amount had been utilized therefore interest is liable to be paid on the disputed amount. Insofar as the penalty under Section 78 is concerned, it is not in dispute that the appellant had wrongly availed CENVAT credit and utilized the same and thereby evaded payment of service tax and this was noticed only in audit records by the Departmental Officers therefore penalty is liable to be imposed under Section 78. However

as these facts came into light only during the records already maintained by the appellant by in their books of accounts proviso of Section 78 as applicable during the relevant period applies in its full force and the penalty is liable to be reduced to 50% of the disputed amount.

7. The impugned order is modified to the extent of the reducing the penalty under Section 78 to 50% of the duty evaded. The appeal is disposed of as herein above.

(Operative portion of this order was pronounced in open court
on conclusion of hearing)

(P. VENKATA SUBBA RAO)
MEMBER(TECHNICAL)

Lakshmi….