CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH – COURT NO – I

Central Excise Appeal No. 1165 of 2009

(Arising out of Order-in-Original No. 15/2009-CE-HYD-III dated 18.09.2009 passed by Commissioner of Central Excise & Service Tax, Hyderabad-III)

M/s ITC Ltd **Appellant**
Pspd, Sarapaka
Bhadrachalam

VERSUS

Commissioner of Central Excise. **Respondent**
Hyderabad-II Commissionerae
7th Floor, Kendriya Shulk Bhavan
L.B. Stadium road,
Basheer Bagh,
Hyderabad

Appearance

Ms Sunitha Advocate for the Appellant.
Shri Arun Kumar Authorised Representative for the Respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No./30457/2019

DATE OF HEARING: 09.04.2019
DATE OF DECISION: 09.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

This appeal is filed against Order-in-Original No. 15/2009-CE-HYD-III dated 18.09.2009. Learned counsel for the appellant submits that this is a show-cause notice for a subsequent period and for the earlier period this Bench in Appeal No E/996/2009 vide Final order No. A/30032/2009 dated 01.01.2019 has already passed an order in their favour. After hearing both sides and perusing records we find it so.

2. The issue involved in this case is regarding demand of an amount equivalent to 10% of the value of exempted goods cleared during the period April 2008 to March 2009 on the ground that the appellant had availed CENVAT credit on common inputs which were used for exempted as well as dutiable goods and they had not maintained separate sets of accounts and reversal of CENVAT credit proportionate to the inputs used is not correct. Accordingly, a show-cause notice dated 05.07.2009 was issued which is confirmed vide the impugned order. This issue is now well settled vide retrospective amendment to Rule 6 of CENVAT Credit Rules 2004 under Section 73 of the Finance Act 2010, according to which, when CENVAT credit on common input used for dutiable and exempted goods was availed, reversal of credit attributable to the inputs used in the manufacture of exempted goods is sufficient. In other words they did not have to reverse 10% of the value of the exempted goods. Relying on this amendment, a decision was already taken in favour of the appellant in the Final Order A/30032/2009 dated 01.01.2019. We find no reason to deviate from the earlier decision.

3. Learned counsel submits that in the earlier decision, their request for waiver of penalty was not accepted by the Bench because they could not confirm that they have paid the interest on the differential amount reversed by them. In the present case, he submits a copy of the E-receipt dated 27.02.2009 for an amount of Rs 3,443/- paid towards the interest where there was a delay in reversal of CENVAT credit proportionate to the inputs used in the exempted products. She, therefore, prays that penalty of Rs

5000/- imposed under Rule 15 of CENVAT Credit Rules 2004 in the impugned order may also be set aside.

4. After considering the submissions, we find that the appellant have made out a case to seek waiver of the penalty. Accordingly we pass the following order.

5. The impugned is set aside and appeal allowed with consequential relief if any.

(dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy