IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/75811/2017

(Arising out of Order-in-Appeal No. 05/SH/CE(A)/GHY/2017 dated 14/02/2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Guwahati.

M/s. Adhunik Cement Ltd. Applicant (s)/Appellant (s)
Vs.
CCE & ST- Shilong
Respondent (s)

Appearance:
Shri Pankaj Patwari, Adv. for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (A.R.) for the Revenue
CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -05.07.2018
Date of Pronouncement:-14/12/2018
ORDER NO. FO/77146/2018

Facts of the case in brief are that the appellant is located in the State of Meghalaya and is availing the benefit of Notification No.20/2007-CE dated 25/04/2007. The above exemption notification entitles the appellant to claim refund equivalent to quantum of duty paid in a given month, other than by way of utilization of Cenvat Credit, subject to the maximum of duty payable on value addition to be computed at the rates specified in the exemption notification. Further, as prescribed in Para 2(D)(a) of the Exemption Notification, refund of such duty shall be claimed as self-credit. For the month of April 2014, the appellant assessee filed a refund claim of Rs.42,76,133/- for the duty paid by them for clearance of goods in terms of the said Notification.

2. Show Cause Notice dated 27/01/2016 was issued alleging that the assessee had availed/utilized inadmissible Cenvat Credit amounting to

Rs.75,15,568/- which is in contravention of Notification. The Adjudicating Authority ordered for recovery along with interest.

3. On appeal, the Ld. Commissioner (Appeals) upheld the Adjudication Order. Hence, the present appeal before the Tribunal.

4. Heard Both Sides and perused the appeal records.

5. On perusal of records, we find that during the period in dispute, out of total Centvat Credit availed by the appellant, an amount of Rs.75,15,568/- was pertaining to various input services for which the appellant assessee discharged Service Tax on 31/03/2014 as a recipient of Service under the Reverse Charge Mechanism (RCM) in terms of Rule 6 of the Service Tax Rules, 1994. The said credit was availed in the Cenvat Register in the month of April 2014. The details of the Credit along with date of payment are reproduced below:-

SI No.	Service Received	Service Tax Paid	Date of Payment
1.	Transport of Goods by road	11,60,187.00/-	31.03.2014
2.	Transport of Goods by road	46,35,000.00/-	31.03.2014
3.	Management Consultants	13,90,500.00/-	31.03.2014
4.	Security/Detective Agency	73,732.00/-	31.03.2014
5.	Manpower Recruitment Agency	2,56,149.00/-	31.03.2014

Total	75,15,568.00/-	

6. We find that the issue is no more res-entigra in view of the decision of the Tribunal in the case of Vinayak Industries Vs. C.C.E. & S.T., Jammu & Kashmir as reported in 2015 (327) ELT 213 (Tri.-Del). The relevant paragraph of the above Order is reproduced below:-

"8. On going through the records of the case against M/s. Vishal Industries, it is seen that there are two allegations against them. The first allegation is that they have availed higher quantum of exemption under Notification No. 56/2002-C.E., dated 14-11-2002 by deferring the availment of cenvat credit, as a result of which lesser duty was paid through Cenvat credit resulting in higher quantum of exemption under the notification. However, on going through the Chart given in Para 7 of the show cause notice regarding month-wise percentage of duty payment through PLA, it is seen that though during most of the months, the same has been varying from 38% to 41%, in some months - March, 2011, June, 2011 and March, 2012, the same was 2% and 0%. Prima facie, from this data, it is clear that even if during certain months, lesser amount of duty was paid through Cenvat credit resulting in higher payment of duty through PLA and higher quantum of exemption, in subsequent months, it got compensated by much higher percentage of duty payment through cenvat credit varying from 98% to 100% and during those months, the appellant have availed almost negligible exemption. In view of this, this has to be treated as revenue neutral case and as such, there is merit in the appellant's plea that there was no intention to avail higher quantum of exemption. As regards, duty demand of Rs. 18,18,507/- on the value of the corrugated boxes applied by M/s. Vishal Industries free of charges, we are of prima facie view that since tin containers were marketable as such, the cost of corrugated boxes supplied by M/s. Vishal Industries would not be includible in the assessable value. Thus, on both the counts, M/s. Vinayak Industries have prima facie case in their favour."

7. In view of the decision, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Pronounced in the court on 14/12/2018.)

Sd/-
(BIJAY KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Pooja