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

E/MA(EH)-75206/2019
And
Appeal No. E/68/2012

M/s. Gail (India) Ltd. Applicant (s)/Appellant (s)
Vs.
Commissioner of Central Excise, Dibrugarh Respondent (s)
Appearance:
Shri M. P. Bagaria, CA for the Appellant (s)
Shri T. Mondal, A.C. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 26.03.2019
ORDER NO. MO/75563/2019 & FO/75418/2019

PER CORAM

The present Miscellaneous Application has been filed for early hearing of the appeal. In view of the reasons as mentioned in the application and the submissions made by the Ld. Advocate, the early hearing of the appeal is allowed. With Concurrence of both sides, appeal is itself taken up for disposal.

2. The facts of the case in brief are that the appellant has a unit situated in Assam for manufacture of LPG as well as SOLVEX-GL. They were availing the benefit of Cenvat Credit on inputs, input services and capital goods. Some of the products manufactured by the appellant were dutiable and others were exempted. However, they were not maintaining separate accounts for receipt, consumption and inventory of input services as required under Rule Rule 6(5) of the Cenvat Credit Rules, 2004.

3. The Department scrutinized the records maintained by the appellant for the period July 2008, to June 2009 and noticed that the appellant was availing the Cenvat Credit on 'Catering Service' as input service. Since this service was a common input service for the manufacture and clearance of dutiable as well as exempted final products, the Department was of the view that the appellant was required to reverse the amount calculated @ 10% of the assessable value of the exempted products (LPG domestic). On the above lines, Show Cause Notice dt. 14/03/2011 was issued proposing demand for reversal of an amount in terms of Rule 6 (3). The Adjudicating Authority confirmed the proposals in the Show Cause Notice and ordered payment of an amount. This order is under challenge in the present proceeding.

4. The appellant is represented by Shri M. P. Bagaria, Ld. CA and Revenue is represented by Shri T. Mondal, A. C. (A. R.) for the Revenue.

5. He submitted that the total amount of Cenvat Credit availed on 'Catering Service' was to the extent of Rs.52,345/-. After realizing the mistake, the appellant has reversed the entire Cenvat Credit availed and intimated the same by reflecting it in the ER-1 in month of November, 2009. In spite of such intimation, Department has issued Show Cause Notice on 14/03/2011. He submits that since the entire disputed Cenvat Credit stands reversed, the Department is not justified in asking for payment of an amount in terms of Rule 6 (3).

6. The Ld. DR justified the order passed by the Lower Authority.

7. After hearing both sides and perusing the record, it is noticed that the question for consideration in the present appeal is whether the appellant is required to reverse the amount calculated @ 10% of the value of exempted goods cleared by them. The Cenvat Credit to the extent of Rs.52,345/- was availed on outdoor catering service. Admittedly, this service is a common input service for use in the exempted as well as dutiable final products but it is seen that the entire disputed credit has already been reversed by the appellant and the same is reflected in the ER-1 returns for the month of November, 2009. Once the Cenvat Credit availed, has been reversed entirely, we are of the view that it is to be considered as not availed *ab initio*. As such, we find no justification for invoking the provisions of Rule 6 (3) and raising the consequent demand after the disputed credit stands reversed. In view of the above, we set aside the impugned order and allow the appeal.

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

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja.