IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 75478 of 2019

Arising out of Order-in-Appeal No.462/HWH/CE/2018-19 Dated 09/11/2018 passed by Commissioner of CGST & Central Excise, Appeals-II, Kolkata.

M/s. Anmol Industries Ltd.
Maitypara, Delhi Road, Marigala,
Bartal, Dankuni, Distt. Hooghly, Pin-711224 **Appellant (s)**

VERSUS

Commr. of CGST & CX, Howrah
M.S. Building, Customs House,
15/1, Strand Road, Kolkata-700001

Respondent (s)

APPERANCE :

Shri Ankit Kanodia, C. A. for the Appellant
Shri A. Roy, Suptd. (A. R.) for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

ORDER NO.FO/76873/2019

Date of Hearing : 15.11.2019
Date of Decision : 15.11.2019

PER P. K. CHOUDHARY :

The appellant assessee is in appeal against the Order-in-Appeal dated 09/11/2018 for confirmation of demand of Rs. 54,423/- as irregular Cenvat Credit of Service Tax on consultancy charges, membership of club, legal services etc alongwith interest and penalty for the period 2014-15.

2. Briefly stated, the facts of the case are that the appellant, M/s. Anmol Industries Limited, is engaged in the business of manufacture of different varieties of Biscuits classifiable under Chapter 19 of the Central Excise Tariff Act, 1985.

3. Based on an EA 2000 audit of the Excise and Service Tax records of the Appellant for the period 2013-14 and 2014-15, it was issued with a Show cause notice dated 26.05.2016 alleging irregular availment of Cenvat Credit to the tune of Rs. 54,423/-alongwith interest and penalty. The said SCN culminated into Order-in-Original dated 16/02/2018, wherein the Adjudicating Authority confirmed the total demand as proposed alongwith interest and imposed penalty. On Appeal, before the Commissioner (Appeals), the Ld. Commissioner (Appeals), confirmed the total demand as

proposed by the Lower authorities and appropriated an amount of Rs. 2,640/- as paid by the Appellant. Hence, the present appeal before the Tribunal.

4. Shri Ankit Kanodia, CA, appeared on behalf of the appellant and Shri A. Roy, A. R. appeared on behalf of the respondent department.

5. The Ld. CA appearing for the appellant submitted that the dispute relates to availment of Cenvat Credit on total number of six invoices as provided in Annexure A/4 of the Appeal paper book, wherein the total amount of Rs. 51,783/- has been availed by the Appellant on services of Income tax consultancy, Advocate’s fees under reverse charge mechanism and membership of club services. The Ld. CA stated that the said expenses are in direct relation to business expenses and related to the business of the Appellant Company and that there is no exclusion of said expense from Rule 2(l) of the Cenvat Credit Rules, 2004. He further relied on the following decisions of the Tribunal in support of his submissions:-

a. **SOURCE HOV INDIA P. LTD. Versus COMMISSIONER OF SERVICE TAX, CHENNAI-I 2016 (46) S.T.R. 36 (Tri. - Chennai)**
b. **SUNDARAM CLAYTON LTD. Versus COMMISSIONER OF C. EX., CHENNAI-II2016 (42) S.T.R. 741 (Tri. - Chennai)**

6. He further submitted that during the said period the Appellant company was following the process of proportionate reversal of Cenvat Credit under Rule 6(3)(b) of the CCR, 2004 and that the appellant has already reversed 98% of the total credits for the said FY and that even if at all the reversal has to be done it cannot exceed the amount left after reversal of such amounts already reversed by the Appellant. He further contended that there is no scope to impose any penalty in the given case of the Appellant as the Appellant has availed regular credit and there is no suppression in this regard. He referred to various decisions in this regard.

7. The learned Authorized Representative for the Revenue, on the other hand, justified the impugned orders.

8. Heard both sides and perused the appeal records.

9. The short issue that arise for consideration in the instant appeal is whether the Appellant is entitled to Cenvat Credit of Service Tax paid on the Advocate’s Fees, consultancy charges and club membership expenses. In this regard the issue is no longer res-integra and is squarely covered by the decision of the Tribunal in **SUNDARAM CLAYTON LTD (***supra)* wherein it was held “(e) *Legal services are availed for statutory compliance which is the duty of the assessee to comply and the credit cannot be denied for such services*

since it has relevancy to the activity of manufacture. Once there is legal obligation and the assessee has to discharge the same irrespective of the manufacture being done but, business to be carried out, cenvat credit of service tax paid on such count is undeniable."

10. Thus, in my view also the Cenvat Credit on legal charges and consultancy charges cannot be denied to the Appellant and thus, the demand on that score is set aside. As regards, Cenvat Credit on club membership subscription, it is seen that the said expense is not in direct relation to the business of the Appellant but for personal use of the director of the Appellant and thus the said Credit cannot be allowed under Rule 2(l) of the CCR, 2004. Hence, the amount of Rs. 612/- is liable to be reversed.

11. Further, as regards the contention of the Appellant that the Appellant followed the procedure laid down in Rule 6(3)(b) of the CCR, 2004 for proportionate reversal of Cenvat credit during the said period which is also verified by the submissions and calculations produced by the Appellant on this score, I hold that the Appellant cannot be asked to reverse again what the Appellant has already reversed under the said Rule 6 of CCR, 2004.

12. Further, the department has not established any suppression of facts by the Appellant and thus the penalty imposed is set aside.

13. The appeal is thus allowed in the above terms with consequential benefits, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Pooja