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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.01 of 2012

(Arising out of Order-in-Original No.CCE/SHILLONG No.04/2011 dated 23 September 2011 passed by Commissioner of Central Excise, Shillong.)

M/s. Numaligarh Refinery Limited
(NRL Complex, District Golaghat, Assam)

...Appellant

VERSUS

Commissioner of Central Excise, Shillong

.....Respondent

(Morellow Compound, M.G. Road, Shillong-793001.)

APPEARANCE

Shri Arvind Baheti, Chartered Accountant for the Appellant (s)
Shri K.Choudhary, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI S.K.MOHANTY, MEMBER(JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO 77006/2019

DATE OF HEARING : 17 December 2019
DATE OF DECISION : 17 December 2019

S.K.MOHANTY :

This appeal is directed against the impugned order dated 23.09.2011 passed by the learned Commissioner of Central Excise, Shillong.

2. Denial of Cenvat credit of Service Tax paid on the GTA Service for transportation of petroleum products from the refinery to the depot and from the depot to the customers' premises, during the period December 2006 to March 2008 is subject matter of present dispute. The department had initiated show cause proceedings against the appellant on the ground that such transportation service should not be

considered as input service in terms of the definition provided under Rule 2(l) of the Cenvat Credit Rules, 2004.

3. Learned Counsel appearing on behalf of the appellant submits that out of the adjudged Service Tax demand of Rs.68,59,61/-, the appellant is not contesting the Cenvat demand of Rs.12,56,098/- and the said amount paid by the appellant before adjudication of the matter was appropriated in the impugned order dated 23.09.2011. With regard to the rest of the adjudged Service Tax demand of Rs.55,95,563/-, he submits that in terms of Rule 2(l) ibid, both the refinery as well as the depot should be considered as "place of removal", entitling the appellant to avail the Cenvat credit of Service Tax on the GTA services paid by it. To strengthen such stand, the learned Counsel has relied upon the judgement of Hon'ble Supreme Court in the case of Commissioner of Cus., C. Ex. & S.T., Guntur v. Andhra Sugars Limited – 2018 (10) G.S.T.L. 12 (S.C.) and Commissioner of Central Excise, Bengaum v. Vasavadatta Cements Ltd. – 2018 (11) G.S.T.L. 3 (S.C.).

4. On the other hand, the learned Authorized Representative appearing on behalf of the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The period of dispute involved in this case is from December 2006 to March 2008. The case of the appellant falls under the pre-amended definition of input service contained in Rule 2(l) ibid. Under the said definition both in the main part as well as in the inclusion part, it has been provided that clearance of final product from the place of removal and outward transportation up to the place of removal should be considered as input service for availment of the Cenvat credit of Service Tax paid on the GTA service for transportation of the final product. Analysing the provisions of amended Rule 2(l) ibid, the Hon'ble Apex Court in the case of Andhra Sugars Ltd. (supra) have extended the Cenvat benefit to the assessee, holding that such transportation service availed by the assessee is confirming to the definition of input service.

7. In view of the above discussions, we do not find any merits in the impugned order, in so far as it has confirmed the Cenvat demand of Rs.55,95,563/- and the resultant interest and penal liabilities. Accordingly, the appeal to such extent is allowed in favour of the appellant.

(Dictated and pronounced in the open Court.)

Sd/-
(S.K.MOHANTY)
MEMBER (JUDICIAL)

Sd/-
(BIJAY KUMAR)
MEMBER (TECHNICAL)

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