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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76475 of 2019

(Arising out of Order-in-Appeal No. 36/KOL-North/KOL/19 dated 26.02.2019 passed by Commissioner of CGST & Central Excise, Kolkata Appeal-I.)

M/s Amar Trades Ltd.,
(MOUZA-Khamar, P.O.- Rajarhat- Bishnupur,
North 24, Parganas, Kolkata-700135)

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata North.
180, Shantipally, Rajdanga Main Road, Kolkata-700107.

.. ...**Respondent**

APPERANCE :

Shri Tapan Kumar Roy, Consultant for the Appellant
Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER No…75612/2023

DATE OF HEARING : 07.06.2023
DATE OF DECISION : 07.06.2023

PER ASHOK JINDAL :

The appellant is an appeal against the impugned order.

2. The brief facts of the case are that the said Appellant was engaged in manufacture of excisable goods falling under chapter 72, 76, 26 & 28 of Central Excise Tariff Act, 1985, as well as providing exempted service being trading of goods, have contravened the provisions of Rule 6(iii) and Rule 2(e) of Cenvat Credit Rules, 2004 as introduced w.e.f. 01.04.2011 vide Notification No. 03/2011-CE(NT) dated 01.03.2011 i.e. the said appellant have availed common input service credit without maintaining separate account of Exempted service.

3. It is alleged that as the appellant was doing the activity of manufacturer and providing Exempted services but not maintaining separate account of input services used for their activities. Therefore,

the appellant is liable to pay five per cent/six per cent of the value of exempted service for the period April 2011 to March 2014.

4. In view of the above set of facts a show-cause notice was issued to the appellant and same was adjudicated.

5. Before the adjudication of the show-cause notice, the appellant reversed whole of the CENVAT Credit availed on input services alongwith interest but the adjudicating authority confirmed the demand at the rate of 5%/6% of the value of exempt services (trading of goods) and penalty was also imposed the said order was confirmed by the Ld. Commissioner (Appeals) against the said order appellant is before me.

6. The Learned Consultant submits that appellant has already reversed whole of CENVAT Credit on input services availed by them alongwith interest during the impugned period therefore, the proceeding against the appellants are to be dropped.

7. On the other hand, Learned AR reiterated the findings of the impugned order.

8. Heard the parties.

9. It is evident from records that the appellants has reversed Cenvat Credit availed on input services before adjudication along with interest. In that circumstance, I hold that the reversal of Cenvat Credit is sufficient to meet out the provisions of Rules 6(3) of the Cenvat Credit Rules, 2004. Therefore, the impugned demand is not sustainable against the appellant.

10. Accordingly, the same is set aside. In result appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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