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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76152 of 2014
Cross Objection No.76797 of 2014

(Arising out of Order-in-Original No.13/Commr./ST/Haldia/Adjn/2014 dated 31.03.2014 passed by Commissioner of Central Excise & Service Tax, Haldia)

Commissioner of Central Excise & Service Tax, Haldia
(15/1, Strand Road, Kolkata-700001)

Appellant

VERSUS

M/s Shree Automotive (P) Limited
(NH-6, PO-Argora, Jungalpur, Dist.-Howrah, Pin-711302)

Respondent

APPERANCE :
Shri P.Das, Authorized Representative for the Appellant
Shri Saurabh Bagaria & Shri Indranil Banerjee, both Advocates for the Respondent

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

FINAL ORDER NO.77644/2024

DATE OF HEARING : 14 NOVEMBER 2024
DATE OF DECISION : 14 NOVEMBER 2024

Per Ashok Jindal :

This is an appeal against the impugned order.

2. The facts of the case are that the respondent were engaged providing repairs and maintenance service of motor vehicles and availing Cenvat credit on input / input service for providing taxable services as well as exempted services without maintaining separate account for input / input services used in providing taxable services. Therefore, the Show Cause Notice was issued to the demand an amount being 8% / 6% of the value exempted services during the financial year 2008-2009 to 2011-12.

3. It was also further alleged that the respondent was availing Cenvat credit of service tax paid during the financial year 2007-08 to

2010-11 with relating relation to transportation of goods by road which is not used, for providing their taxable services. Therefore, the utilization of said credit is required to be reversed. It was also alleged that the respondent has made short payment of servicing or repairs of motor vehicles during the impugned period. Therefore, the Show Cause Notice proposed to recover the said amounts.

4. The adjudicating authority passed the order holding that as the respondent has reversed proportionate Cenvat credit attributable to exempted services. Therefore, demand for recovery on account of 8% / 6% of the value of exempted services is not sustainable.

5. With regard to availment of Cenvat credit on goods transport agency service, it was held by the adjudicating authority that same form part of the Cenvat credit availed by the respondent on exempted service and which is the part of the issue availment of Cenvat credit without maintaining the separate account.

6. With regard to third issue of short payment the respondent has recorded the same in their ST3 return.

7. Therefore, no demand is sustainable against the respondent. Aggrieved from the said order, the revenues are before us disputing the proportionate reversal of Cenvat credit by the respondent and prayed that respondent will be directed to pay 8% /6% of the value of taxable service. It was also contended that on transportation service which has been used by the respondent for taxable as well as exempted service, the respondent is not entitled to take Cenvat credit and same is required to be paid by the respondent. Hence, this appeal.

8. Heard the Ld. Authorized Representative for the Revenue.

9. We found that it is a fact which has not been disputed by the revenue that respondent has already reversed the entire Cenvat credit attributable to exempted services. Therefore, the respondent is not liable to pay 8% / 6% of the value of exempted services.

10. Therefore, we do not have any infirmity in the impugned order to that extent.

11. We further take note of the fact that the amount of transportation service was part of the allegation that the respondent is availing Cenvat credit on input and input services without maintaining separate account and that issue has been dealt by the adjudicating authority holding that as respondent has reversed entire Cenvat credit attributable to exempted service along with interest. In that circumstances, there is no case of the revenue. In the above discussion, we do not find any infirmity with the impugned order.

12. Considering the Cross Objection filed by the respondent and in the facts and circumstances of the cases, no penalty is imposable on the respondent.

13. In these terms, we dispose of the Appeal as well as the Cross Objection.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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