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

REGIONAL BENCH – COURT NO. 1

Excise (Cross) Application No. 76043 of 2018

In

Excise Appeal No. 76005 of 2018

(Arising out of Order-in-Appeal No. 117/SLG-C.EX/2018 dated 30.01.2018 passed by the Commissioner Siliguri Appeal Commissionerate C. R. Building, Hakimpura Haren Mukherjee Road, Siliguri-734 001)

M/s. Zydus Wellness **: Appellant**
NR. Mamring Power House, Mamring Block,
Namthang Elakha, Mamring, South Sikkim-737132

VERSUS

The Commissioner of Central Excise & Customs. **: Respondent**
Siliguri Commissionerate,
Central Revenue Building,
Haren Mukherjee Road,
Hakimpura, Siliguri-734001

APPEARANCE:

Shri Vasudev A., Advocate for the Appellant
Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75935/ 2025

DATE OF HEARING / DECISION: 02.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Zydus Wellness, Sikkim (hereinafter referred to as the "appellant") has filed this appeal against the imposition of penalty on them of Rs.3,09,573/- under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. The facts of the case are that the appellant has received the service of 'renting of immovable property' from the service provider M/s. Tirupati Plaza Pvt. Ltd. And availed CENVAT Credit in accordance with Rule 4(7) of the CENVAT Credit Rules, 2004. The Department conducted an audit and the audit officers found that the assessee-appellant had not paid the invoice value and service tax charged on that within three months from the date of such invoice. Accordingly, it was alleged that the appellant was ineligible to avail the credit to the tune of Rs.3,09,573/-. Agreeing to the above objection raised by the Department, the appellant reversed the amount of Rs.3,09,573/- vide Credit Entry No. 4600000487 dated 24.08.2016, along with interest amounting to Rs.1,57,967/- vide e-challan no. 00061 dated 24.08.2016. However, the Department issued a Show Cause Notice dated 25.08.2016 inter alia proposing imposition of penalty on the appellant.

3. The said notice was adjudicated vide the Order-in-Original dated 24.10.2016 wherein the ld. adjudicating authority imposed a penalty of Rs.3,09,573/- on the appellant.

4. Aggrieved by the imposition of penalty, the appellant filed an appeal before the Ld. Commissioner (Appeals), who, vide the impugned Order-in-Appeal No. 117/SLG-C.EX/2018 dated 30.01.2018 upheld the penalty imposed on the appellant.

5. The present appeal is against the imposition of penalty, as upheld vide the impugned order mentioned above.

6. The Ld. Counsel appearing on behalf of the appellant submits that they had reversed the credit availed by them, along with interest, immediately after issue of the Show Cause Notice. It is submitted that therefore, there is no intention to avail irregular credit in this case since they are legally entitled to avail the credit of 'renting of immovable property' service as it is an input credit; there is no issue regarding eligibility of the said credit to the appellant. It is pointed out by the appellant that the Department has raised a technical issue on the availment of credit on the ground that the invoice value, along with service tax, was not paid within a period of three months from the date of the invoice. Since they have reversed the credit, along with interest, immediately after issue of the Show Cause notice, the penalty imposed on them is not legally sustainable. Accordingly, the appellant has prayed for setting aside the penalty imposed on them.

7. The Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. I find that the appellant has availed CENVAT Credit in respect of the service of 'renting of immovable property' received from the service provider viz. M/s. Tirupati Plaza Pvt. Ltd. It is not the case of the Department that the said service is not an input service. The receipt of the said service and utilization of the same in providing output service is not in dispute.

10. The Department has raised the objection only

on the ground that the invoice value, along with service tax, was not paid within three months from the date of issue of the invoice.

11. I observe that immediately after issuance of the Show Cause Notice, the appellant had reversed the CENVAT Credit amounting to Rs.3,09,573/-, along with interest amount to Rs.1,57,967/-. In these facts and circumstances, I find that there is no intention to avail irregular credit in this case on the part of the appellant.

12. Accordingly, I hold that the penalty imposed on the appellant is not legally sustainable and hence, the same is set aside.

13. In view of the above, the impugned order to this extent is set aside and the appeal is allowed. The cross objection filed by the respondent is disposed off accordingly

(Order was pronounced in Open court)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP