IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/88122/2017

(Arising out of Order-in-Original No. 03/PR.COMMR.(KCG)/CGST&CEX/MC/2017 dated 29.9.2017 passed by Principal Commissioner, CGST & Central Excise, Mumbai)

New Era Fabrics Pvt. Ltd. **Appellant**

Vs.

Commissioner, CGST, Mumbai **Respondent**

Appearance:

Shri Pramod Khera, Advocate, for appellant
Shri Dilip Shinde, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing: 5.7.2018
Date of Decision: 5.7.2018

ORDER No. **A/86957/2018**

Heard both sides.

2. When the matter was called for hearing on 29th May 2018, learned AR for Revenue was directed by the Bench to call for the report from department regarding deposit of the disputed amount in question, by the appellant. Pursuant to such direction by the Bench, the Assistant Commissioner (Division-VII), Mumbai Central Commissionerate, vide letter dated 4.7.2018, has confirmed that the appellant had already deposited the

adjudged service tax demand confirmed against it. However, the learned AR appearing for Revenue contends that the report furnished by the Assistant Commissioner (Division-VII) has not correctly captured the data inasmuch as excise duty availed as input credit has been utilized for payment of service tax on the taxable service of renting of immovable property. He submits that such payment/adjustment from the cenvat account is not proper and justified.

3. Considering the submissions of the learned AR that the report dated 4.7.2018 has not properly prepared and captured the actual cenvat credit taken and utilized for payment of service tax on the disputed taxable service, I am of the view that the matter should go back to the original authority for proper computation of the service tax liability and for ascertaining the fact whether, the adjudged amount, in question, had already been deposited by the appellant, as contended by the learned Advocate.

4. Therefore, after setting aside the impugned order, I remand the matter to the original authority for passing a fresh adjudication order in line with the above observations. The original authority should also decide the issue whether, the appellant is liable to pay interest and penalty under the circumstances of the case.

Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

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