**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.2**

**APPEAL No.ST/87297/2018**

(Arising out of Order-in-Appeal No.CD/TR(Appeals)/MC/79/2017-18 dated 28/02/2018 passed by the Commissioner of Central Excise (Appeals),Mumbai)

**HBS Sea View Pvt.Ltd.,** : **Appellant**

**VS**

**Commissioner of Central Excise, Mumbai** : **Respondent**

**Appearance**

Shri.Sunil Vaidya, CA for Appellant
ShriO.M. Shivdikar, Asst. Comm. (A.R) for respondent

**CORAM:**

**Hon'ble Shri S K Mohanty, Member (Judicial)**

**Date of hearing : 26/09/2018**
**Date of decision : 26/09/2018**

**ORDER NO. A/87490/2018**

1. Heard both sides and perused the records.

2. The appellant has assailed the impugned order on the ground that its case is governed under the provisions of Rule 4 (7) of the Cenvat Credit Rules, 2004, as against the demand confirmed by the department under sub-rule (1) of Rule 4 of the Rules.

3. Considering the fact that different interpretations were placed by both the appellant as well as Revenue regarding the applicability of correct statutory provisions to the circumstances of the case, I am of

the view that ends of justice will be met, if the matter is remanded to the original authority for verification of the documentary evidence to arrive at the proper conclusion, as to which of the provision of Cenvat Credit Rules will more appropriately be applicable for adjudication of the matter arising out of the present dispute.

4. Therefore, after setting aside the impugned order, I remand the matter to the original authority for passing of fresh adjudication order, in terms of above observations. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the matter afresh.

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

(Pronounced and dictated in court)

**(S K Mohanty*)***
***Member (Judicial)***

***PJ***