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

Appeal No. ST/86070/15

(Arising out of Order-in-Appeal No. KLH-EXCUSS-000-APP-067-14-15 dated 19.02.2015 passed by the Commissioner of Central Excise & Service Tax (Appeals), Pune).

M/s Sindhudurg District Central Co-op Bank Ltd.	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Goa	Respondent

Appearance:

None	for Appellant

Shri Atul Sharma, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL) **HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)**

Date of Hearing: 28.06.2018

Date of Decision: 28.06.2018

ORDER NO.

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. KLH-EXCUSS-000-APP-067-14-15 dated 19.02.2015 passed by the Commissioner of Central Excise & Service Tax (Appeals), Pune.

3. Briefly stated facts of the case are that appellant are engaged in providing taxable service under the category of Banking and other financial services. Demand notice was issued to the appellant alleging short payment of Service Tax of Rs.15,54,796/- and irregular availment of credit amounting to Rs.2,55,112/- for recovery with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed an appeal before the learned Commissioner (Appeals), who *inter alia* held that the appellants are liable to pay irregularly availed amount of credit of Rs.2,55,112/- along with interest and penalty of equal amount under Rule 15(3) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. The learned AR for the Revenue has submitted that the appellants were rendering taxable service as well as exempted services during the relevant period and availed credit of Service Tax paid on various input services used both for taxable as well as exempted services. However, they have not followed the procedure laid down under Rule 6(2) of CENVAT Credit Rules for maintaining separate records relating to input services used for providing taxable and exempted services, nor they have paid amount equivalent to CENVAT Credit attributable to the input services used in or in relation to provision of exempted services in terms of Rule 6(3)(ii) of CENVAT Credit Rules, 2004. It is his

contention that the authorities below have rightly confirmed the demand and imposed penalty on the appellant. However, he has fairly accepted that the appellants were not given opportunity to discharge 25% of penalty in accordance with Rule 15(3) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

5. We have carefully considered the submissions advanced by the learned AR for the Revenue and examined the grounds of appeal stated in the appeal memorandum. In the present appeal, the appellant assailed the impugned order to the extent of confirming reversal of credit of Rs.2,55,112/- and imposition of penalty of equivalent amount. We find that the learned Commissioner (Appeals) considering the facts that the appellants have failed to reverse the credit attributable to inputs used in providing the exempted services in terms of Rule 6(3)(ii) of CENVAT Credit Rules, 2004 and observing that Rule 6(3)(b) was inserted in the CENVAT Credit Rules, 2004 subsequently, upheld inadmissibility of CENVAT Credit and penalty of equal amount. We find from the records that there is no dispute of the fact that the appellant has utilized input services on which credit availed for rendering taxable as well as exempted services during the relevant period. In these circumstances, we do not find any discrepancy in the order of the Commissioner (Appeals) in confirming the demand of CENVAT Credit against the appellant used in providing exempted service. However, we find that the appellant was not given an opportunity to discharge 25% of the penalty imposed under Rule 15(3) of the CENVAT Credit Rules, 2004, which they are entitled to subject to fulfillment of laid

down conditions. Accordingly the benefit of discharging 25% of the penalty imposed under Rule 15(3) is allowed subject to fulfillment of laid down conditions. Impugned order is modified and appeal is partly allowed to the said extent.

(Operative portion of the order pronounced in Court)

(S. Srivastava) **Member (Technical)**	**(Dr. D.M. Misra)** **Member (Judicial)**

Sinha