

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**APPEAL NO: E/87070/2018**

***Arising out of:*** Order-in-Appeal No. NSK /EXCUSE/000/  
APPL/195/17-18 dated 26.02.2018

***Passed by:*** Commissioner (Appeals), Central Excise &  
GST, Nasik.

STI Sanoh India Ltd.

*versus*

C.C.E & S.T, Nasik

***Appellants – Represented by:***

Shri Jaideep Wadge, Advocate

***Respondent – Represented by:***

Shri D.S. Chavan, Assistant  
Commissioner (AR)

**Date of hearing** 11/10/2018

**Date of pronouncement** 30/11/2018

**CORAM**

**Hon'ble Shri Ajay Sharma, Member (Judicial)**

**ORDER NO:** A/88045 / 2018

One M/s. Yoganand Autcomp (P) Ld. has leased out Plot No. D-86, MIDC, Supa, Parner, District Ahmednagar to the Appellant consisting a total area of 33,000 sq. ft. The substantial portion of the said premises is being used as a factory by the Appellant and only a small portion of the same is being used as depot by the Appellant for its Dewas manufacturing unit. In other words, out of the total area of 33,000 sq.ft., 30,990 sq. ft. is being used as factory, whereas in the same premises another 2,009 sq. ft. is being used as depot by the

Appellant. Ratio wise the area of the said plot for using as factory and depot is 93.91%: 6.09%. This fact is not disputed by the authority below.

2. In the instant Appeal, the Appellants are contesting only the dis-allowance of Cenvat Credit by the Commissioner (Appeals) which was availed on renting of immovable property i.e. the abovementioned plot and they have specifically mentioned that they don't have any objection about the disallowance of Cenvat Credit on other input services.

3. A show cause notice dated 21.5.2015 was issued to the Appellant for recovery of Rs.11,00,877/- which was availed by the Appellant as Cenvat Credit. Out of the said amount Rs.10,38,070/- pertains to credit on Renting of Immovable property whereas remaining amount of Rs.62,806/- pertains to Cenvat Credit on Manpower Supply, Chartered Accountant Service, Repair & Maintenance and GTA service. The period involved in this Appeal is between April, 2011 to October, 2013. According to the department since the appellant has suppressed the facts from the knowledge of the department with intent to avail inadmissible Cenvat credit to pay excise duty, therefore the extended period has been invoked and penalty in terms of Rule 15(2) of Cenvat Credit Rules, 2004 has been imposed. The Additional Commissioner vide Order-in-Original dated 25.6.2017 disallowed the Cenvat Credit of Rs.11,00,877/- in terms of

Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A of Central Excise Act, 1994 along with interest and also penalty of equal amount. On Appeal, the Id. Commissioner (Appeals) CE& GST, Nashik vide impugned order dated 26.2.2018 modified the Order-in-Original and reduced the disallowance to Rs.8,95,339/-.

4. I have heard Id. counsel for the Appellant and Id. Authorised Representative for the Revenue and perused the record. According to Id. counsel for the Appellant although in Para 7.1 of the impugned order, the Id. Commissioner has specifically admitted that there is sufficient force in the contention of the appellant that out of the total area only 6.09% area was used for depot, therefore, out of the total credit of Rs.10,38,070/- only Rs. 63,219/- (i.e. 6.09%) is ineligible, whereas the remaining amount of Rs.9,74,851/- is liable to be allowed but while calculating the amount in the impugned order, he didn't take into consideration the aforesaid observation. The relevant extract of Para 7.1 of the impugned order is as under:-

*“7.1 Renting of immovable Property service- The appellant contends that as per the lease deed entered into between the appellant and M/s. Yoganand Autocomp Pvt. Ltd., (who has provided the said service). It can be seen that the total area under lease is 33,000 sq. ft. of which an area of 30,990 sq. ft. is used in or in relation to manufacturing activity and the remaining 2010 sq. ft. is used for the trading activity which constitutes 6.09% of the total area. As the disputed credit amount involved is Rs.10,38,070/-, an amount of Rs. 63219/- (Rs. 1038070/- x6.09%) pertains to the trading area. I find sufficient force in this contention of the appellant primarily for the reason that the rent amount is solely dependent on the area given on lease. Hence, the said amount of Cenvat credit of Rs.63,219/- is required to be disallowed in this regard.”*

In order to support his calculation the appellant has filed the table which is as under:-

Cenvat credit proposed to be dis-allowed as per Show Cause Notice	Inadmissible Cenvat on credit renting based on the area used for depot i.e. @6.09%	Inadmissible Cenvat credit availed on miscellaneous input services	Eligible Cenvat credit
1	2	3	4= 1-2-3
11,00,877/-	63,219/-	62,806/-	9,74,852/-

He further submitted that the details regarding the availment of Cenvat Credit on input services were recorded in the statutory records of Excise and also were shown in the monthly returns filed by the Appellant from time to time, therefore the Appellant are not liable to pay the equal penalty and that as per the proviso of Section 11AC (1)(C) as it stood during the period in dispute, they are liable to pay only 50% penalty and therefore the equal penalty is required to be reduced to fifty percent. On the other the Id. Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order and submitted that the appeal filed by the Appellant be dismissed.

5. It is not in dispute that out of the total leased area of 33,000 sq. ft., the appellant has used 30,990 sq. ft. (93.91%) for manufacturing activity and the remaining area of 2010 sq. ft. (6.09%) only was used for depot activity. To support their claim, the Appellant have also produced the certificate issued by M/s. Parag Mutha, Chartered

Accountant before the Adjudicating Authority. It is not the case of Revenue at any point of time that the entire premises has been used for trading activity or for depot purpose only. None of the authorities have given any reason as to how the department has quantified the inadmissible Cenvat credit on the basis of ratio of sales turn-over of each activity. The ratio of depot sale to manufacturing sale is applicable when the credit has been held to be inadmissible for the entire premise which was the case of the department in the show cause notice but it was not accepted by the Id. Commissioner. According to me once the Id. Commissioner has accepted the contention of the appellant that only the amount of Rs.63,219/- out of the disputed credit amount of Rs.10,38,070/- is required to be disallowed for the renting of immovable property service then there was no need to go into the ratio of trading activity towards manufacturing turnover. Nor any justification has been given by the Id. Commissioner for going into the ratio aspect. Therefore since the Appellant has availed a total amount of Rs.10,38,070/- as input service tax credit for this renting of immovable property service, therefore 6.09% of the said amount i.e. Rs.63,219/- is only ineligible for credit since that was used for trading activity and not for the manufacturing purpose. Since the Appellant don't have any objection about the disallowance of Cenvat Credit on other input services, therefore the same is upheld along with interest and penalty. In view of proviso to Section 11AC(1)(C), as it was applicable during the period in dispute, the penalty is also reduced to fifty percent.

6. In that circumstances, the matter needs correct quantification of demand to be recovered from the appellant. In that circumstances, the impugned order is set aside and the matter is remanded back to the adjudicating authority for the limited purpose of re-quantification of correct demand with interest and accordingly quantification of the penalty, in accordance with the observations made hereinabove.

7. Appeal filed by the Appellant is disposed of in terms of the above.

*(Pronounced in Court on .....*)

**(Ajay Sharma)**  
**Member (Judicial)**