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

APPEAL NO: ST/87438/2018

Arising out of: Order-in-Appeal No. NSK/CEX/OOO/ APPL/343/17-18 dated 16/03/2018.

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

Appellants – Represented by:

Technoforce Solutions (I) Pvt. Ltd. — Shri M.H. Patil, Advocate

Versus

Respondent – Represented by:

C.C.E & ST, Nasik — Shri M.Suresh, DC (AR)

Date of hearing : 03/10/2018
Date of pronouncement : 30/11/2018

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Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/88046 / 2018

The ld. Counsel for the Appellant assailed the impugned order dated 16/03/2018 passed by the ld. Commissioner (Appeals) on various grounds. According to him the Commissioner (Appeals) erred in holding that the exhibits enclosed by the Appellant cannot establish those services which the Appellant has utilized as his input service. According to ld. Counsel, the Commissioner's denying the Cenvat credit on the ground that it is not input service as it is re-imbursement of expenses/maintenance of pilot plant as Technoforce BV is not correct, because measure of value does not decide the nature of tax/admissibility of credit, but the quantum of tax which can be levied and collected, as held by the Hon'ble High Court of Kerala in the matter of Kerala Colour Lab. Association vs. Union of India; 2003(156) ELT 17(Ker.). He further submitted that the ld. Commissioner failed to appreciate that the Cenvat Credit was not reversed voluntarily by the Appellant, but was reversed at the instance of audit party against their wishes, which gets substantiated from the clear expression mentioned in the following documents in the Appeal paper-book :-

i) In refund application (p/95/96), ….. "At the instance of audit party we reversed the credit .." ---- "and promotes the goods and help in procuring orders …" ---- "we have wrongly paid Rs.40,82,852/-…."

ii) In SCDN (p/98-para 2), …. "and reversed the said Cenvat credit as an when Department objected …. during the course of audit …." ---- para 10 …. "on the ground that they had reversed the Cenvat credit wrongly" ---- para 13 …. "subsequently reversed by them as and when it was objected …. during the course of audit ..."

iii) In reply to SCN dated 25.11.2015 (p/103- last para), …. "At the instance of audit we reversed Cenvat credit. …."

iv) Letter dated 28.09.2015 (p/105 –Forth para), …. "wrongly reversed by us at the instance of audit…."

He further submitted although that before the ld. Commissioner the argument was raised that the provisions of S. 11A(1)(b) or 11A(6) are not applicable on the facts of the case, but the ld. Commissioner failed to give any finding on the said argument raised by the Appellant at the time of hearing. He also submitted that withdrawal of appeal against the Order-in-Original dated 15.5.2015 does not have any relevance to the admissibility of Cenvat credit, as the said Order-in-Original related to taxability of the amount paid to the Technoforce BV and not to Cenvat Credit. On the other hand, the Learned Authorised Representative appearing for the Revenue reiterated the findings recorded by the ld. Commissioner in the impugned and submitted that the instant Appeal deserves to be dismissed.

2. I have heard ld. Counsel for the Appellant and Learned Authorised Representative for the Revenue and perused the record. While going through the impugned order, I find that the ld. Commissioner did not deal with the abovementioned contentions raised by the Appeal before him at the time of hearing. I also find that the ld. Commissioner has also not dealt with the decisions cited by the Appellant before him at the time of hearing although the said submission of the Appellant has been recorded in paragraph 29 of the impugned Order. According to me, the findings on the said contentions/submissions will have a bearing on the outcome of the Appeal. In view of the above, without making any observation on the merits of the Appeal, I set aside the impugned order and remand the matter back to the ld. Commissioner to decide the Appeal afresh in accordance with law, after taking into consideration all the contentions/submissions raised by the Appellant.

3. The Appeal is, therefore, allowed by way of remand.

(Pronounced in Court on ………………..)

(Ajay Sharma)
Member (Judicial)

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