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

APPEAL NO: E/86837/2018

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-1078/2017-18 dated 14.02.2018 passed by the Commissioner of Central Tax (Appeals-I), Pune.]

Mungi Engineers Pvt. Ltd. ***Appellant***

versus

Commissioner of Central Excise & Service Tax, Pune-I ***Respondent***

Appearance:

None for appellant

Shri Sanjay Hasija, Superintendent (AR) for respondent

CORAM:

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

Date of hearing: 22/11/2018
Date of decision: 22/11/2018

ORDER NO: A/88316 / 2018

Per: S.K. Mohanty

None appeared for the appellant, despite notice. On perusal of order sheet, I find that the matter was listed for hearing on 31.07.2018, 20.08.2018 and 27.09.2018. In the said dates, the appellant did not appear for hearing and the Bench specifically adjourned the matter on

27.09.2018 observing as “Last Chance”. Today when the matter was called, none appeared for the appellant and also there is no adjournment request. This attitude of the appellant shows that it is not serious in pursuing its statutory right of appeal. Thus, with the help of Learned DR for the Revenue, the appeal is taken up for hearing and disposal today.

2. Denial of Cenvat benefit on GTA service is the subject matter of present dispute. The issue arising out of the present dispute is no more res integra in view of the judgment of Hon’ble Supreme Court in the case of Commissioner of Central Excise and Service Tax Vs. Ultra Tech Cement Ltd., reported in 2018 (2) TMI 117 (SC). It has been ruled by the Hon’ble Apex Court that after the amendment of definition of input service w.e.f. 01.03.2008, services used/utilized for transportation of goods “up to the place of removal”, should be treated as input service. In this case, it is an admitted fact on record that the goods were removed from the factory of the appellant for onward sale to its buyers and for that purpose, the GTA service was availed by the appellant. Thus, as per the judgment of Hon’ble Supreme Court referred (supra), GTA service should not be considered as input service for availment of Cenvat benefit. However, the issue was highly contentious and resolved by the judgment of Hon’ble Supreme Court, referred supra. Hence, under such scenario, penal provisions cannot be invoked for imposition of penalty on the appellant. I find

that in an identical situation, this Tribunal in the case of CCE & ST, Pune-I Vs. Bilcare Ltd. vide final Order No. A/86731/2018 dated 13.06.2018 though has upheld denial of Cenvat benefit, but set aside the penalty on the ground that the issue of availment of Cenvat Credit was debatable, which was ultimately settled by the Apex Court, in the case of Ultratech Ltd. (supra). Hence, I am of the considered view that imposition of penalty on the appellant will not stand for judicial scrutiny.

3. In view of above, the impugned order is set aside and the appeal is allowed to the extent of imposition of penalty on the appellant. However, the impugned order sustains to the extent of denial of Cenvat benefit on the GTA service.

4. In the result, the appeal is partly allowed in favour of the appellant.

(Order dictated in court)

(S.K. Mohanty)
Member (Judicial)

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