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

APPEAL NO: ST/87082/2018

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/798/17-18 dated 28.02.2018 passed by the Commissioner (Appeals) GST & Central Excise, Nagpur]

Minar Hydrosystems Pvt. Ltd.	***Appellant***
versus	
Commissioner of Central Excise & Service Tax, Nagpur	***Respondent***

Appearance:

Shri P.V. Sadavarte, Advocate for appellant

Shri O.M. Shivdikar, Assistant Commissioner (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/88318 / 2018

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in providing various taxable services, defined under the Finance Act, 1994 and also engaged in the business of trading activities. The appellant avails Cenvat Credit of central excise duty paid on inputs/capital goods and service tax on the input services. During the disputed period 2011-12 to 2014-15, the appellant had availed common input services used /utilized for providing taxable service and for the trading activities. Availment of such common input service was disputed by the department. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 17.03.2017, wherein Cenvat Credit amounting to Rs.4,72,821/- was disallowed. Vide the said order, the interest demand was confirmed on the appellant. Besides, the adjudication order also imposed penalties under Rule 15(1) and Rule 15(3) of the Cenvat Credit Rules, 2004 read Section 78 of the Finance Act, 1994. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 28.02.2018 has partially modified the adjudication order and reduced the quantum of disallowance of Cenvat Credit to the tune of Rs.1,71,491/-and also penalty under Rule 15(3) of the Rules to Rs.1,47,491/-. The impugned order has set aside the penalty imposed under Rule 15(1) of the Rules. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and perused the records.

3. The appellant contended that it had reversed proportionate Cenvat Credit in respect of the input services commonly used for providing the output service as well as for undertaking the trading activity. However, on perusal the impugned order, I find that the reversal of Cenvat Credit as claimed by the appellant was not inconformity with Rule 6 of the Rules. Therefore, I am of the consider view that denial of Cenvat benefit in the adjudication order is proper and justified. With regard to the claim of the appellant that interest demand on the entire period of dispute cannot be confirmed in view of amended provisions of Rule 14 of the rules, I find that the said rule was amended w.e.f. 17.03.2012. The effect of amendment is that the word “or” was replaced with word “and”, resulting thereby that Cenvat Credit unless utilized for payment of service tax on the output service, the interest demand cannot be fastened on the Assessee. However, since the reversal particulars and available balance in the Cenvat account during the disputed period was required to be verified, I am of the view that the matter should go back to the original authority for fact finding with regard to payment of interest by the appellant considering the provisions of both un-amended and amended Rule 14 of the rules. As regards imposition of penalty on the appellant is concerned, I am of the view that the provisions of Rule 15(3) of the rules read with Section 78 of the Act cannot be invoked inasmuch as there was no element of suppression,

misstatement etc., on the part of the appellant in defrauding the Government Revenue. Therefore, penalty imposed on the appellant is liable to be set aside and accordingly, the same is set aside and the appeal is allowed to such extent in favour of the appellant.

4. The appeal is disposed of in above terms.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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