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

Appeal No. E/88036/2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/APP-109/17-18 dated 19.04.2018 passed by Commissioner of CGST & Central Excise (Appeals), Bhiwandi Mumbai)

Sai Industries **Appellant**

Vs.

Commissioner of CGST **Respondent**
Palghar

Appearance:

Ms. Rima Sunit, Representative for appellant
Shri A.S. Parabh, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 20.02.2019

FINAL ORDER NO. **A/85363/2019**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged *inter-alia*, in the manufacture of paints and varnishes falling under Chapter 32 of the CETA, 1985. The appellant avails CENVAT Credit of Central Excise duty paid on inputs & capital goods and service tax on input services. During the course of EA-2000 audit, the Central Excise Officers observed that the assessee had availed ineligible CENVAT Credit on input services. On the basis of objection raised by audit wing, the appellant had reversed the amount of Rs.1,84,517/- and vide letter dated 07.09.2016 had intimated the department that due to inadvertence, ineligible credit was availed by it. Upon reversal of Cenvat amount, the department issued show-cause notice on 24.11.2016, calling upon the appellant to show cause, as to why the service tax credit amounting to Rs.1,85,104/- should not be demanded and recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The matter was adjudicated by order dated 10.02.2017, wherein the original authority had confirmed the Cenvat demand of Rs.1,85,104/- along with interest and also imposed equivalent amount of penalty on the appellant under Rule 15(2) of the Rules read with Section 11AC of the Act. On appeal against the adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 19.04.2018 has upheld confirmation of the adjudged demand. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The authorized representative appearing for the appellant submits that due to inadvertence, CENVAT Credit was wrongly taken by the appellant and on detection of such mistake by the audit wing, such irregularly availed CENVAT Credit was reversed and due intimation of such effect was filed before the department. Thus, she submits that there was no suppression of

facts on the part of the appellant, in defrauding the Government revenue. In this context, she has referred to the letter dated 07.09.2016 addressed to the Jurisdictional Range Superintendent intimating the particulars of reversal of CENVAT Credit, with the request for non-initiation of any proceedings in terms of Section 11A (2) of the Act. Further, learned authorized representative of the appellant also submits that out of the total liability of Rs.1,85,104/-, the appellant had reversed the amount of Rs.1,84,517/- before the issuance of show-cause notice and the balance liability was discharged before passing of the adjudication order. Thus, it is prayed that the show-cause notice issued and the adjudication order passed by the department cannot be sustained, as the statutory provisions have been wrongly interpreted in confirming the penalty amount.

3. On the other hand, the learned A.R. appearing for Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. In this case, the appellant is not contesting the Cenvat demand along with interest confirmed against it. The scope of grounds of appeal is limited only for consideration of the issue whether, under the facts and circumstances of the case, can the

provisions of Rule 15(2) of the Rules read with Section 11AC of the Act be invoked for imposition of penalty.

6. It is an admitted fact on record that based on the Books of Accounts maintained by the appellant, the Central Excise Officers observed that the discrepancies regarding availment of irregular credit. It is not the case of Revenue that the appellant had suppressed such facts regarding availment of CENVAT Credit, which were made known to the department through external sources or otherwise. Since the adjudged demand was proposed for recovery based on records maintained by the appellant, the demand notice should have been issued under Section 11A(4) of the Act, without taking recourse to Section 11A of the Act. Admittedly, there is no element of suppression, mis-statement, fraud etc, on the part of the appellant in defrauding the Government revenue. Therefore, in my considered opinion, the department has wrongly invoked the provisions of Section 11A(4) of the Act, for issuance of show-cause notice and confirmation of the adjudged demand.

6. In view of above, I do not find any merits in the impugned order, so far as it uphold the adjudged penalty confirmed in the adjudication order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant with regard to imposition of penalty only.

7. The appeal is disposed of in the above terms.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk