CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – MUMBAI

Service Tax Appeal No. 88623 of 2018

Arising out of Order-in-Appeal No. PK/400/MC/2018 dated 15th May 2018 passed by Commissioner GST & CE (Appeals-II), Mumbai.

P N WRITER AND CO. P. LTD. ....**Appellant**
105 dr. b Ambedkar Road Next to
Voltasagr Kalchowky
Mumbai 400 033**.**

VERSUS

Commissioner of CGST, Mumbai Central ....**Respondent**
Null 4th Floor, C. EX. Bldg.
Churchgate, Mumbai-400020

WITH

Service Tax Appeal No. 88624 of 2018

Arising out of Order-in-Appeal No. PK/400/MC/2018 dated 15th May 2018 passed by Commissioner GST & CE (Appeals-II), Mumbai

P N WRITER AND CO. P. LTD. ....**Appellant**
105 dr. b Ambedkar Road Next to
Voltasagr Kalchowky
Mumbai 400 033**.**

VERSUS

Commissioner of CGST, Mumbai Central ....**Respondent**
Null 4th Floor, C. EX. Bldg.
Churchgate, Mumbai-400020

APPEARANCE:

Shri D.H. Nadkarni, Advocate for the Appellant
Shri Onil Shivadikar, Asst. Commissioner, Authorised Representative for the Respondent

CORAM: HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86217-86218/2019

DATE OF HEARING: 05-07-2019
DATE OF DECISION:05-07-2019

PER: DR. SUVENDU KUMAR PATI

Heard on these two appeals bearing nos. PK/400/MC/2018 dated & No. PK/400/MC/2018 passed by the Commissioner GST & CE (Appeals-II) in his common order dt. 15th May 2018. Learned Counsel for the Appellant submits that from the date of receipt of show cause notices, which were based on Audit report, they have been approaching Respondent Department to furnish detail of statements containing item wise denial of Cenvat Credit so that Appellant would be in a position to understand which were the input credits held tobe inadmissible. A bunch of documents of about 252 pages by email to the Appellant was sent from which it was unable to asses the correlation between Cenvat Credit availed or available to the Appellant but, on perusal of both the show cause notices dated 23-4-2012 vide notice no. SCN/7/ADC/JC/DN II/2012-13 it is found that total denial of Cenvat Credit to the tune of Rs. 12,92,874/- was shown in a table (Annexure A) without any description of item wise denial. Same is the situation in respect of show cause notice no. SCN/8/ADC/JC/DN II/2012-13 in which Rs. 23,85,687/- duty demand was made upon refusal of Cenvat Credit to the appellant along with interest and penalty.

2. It has been pointed out by the Learned AR for the Department that Appellant was granted 5 adjournments during hearing of the case by the Adjudicating authority i.e. the Additional Commissioner of Service Tax,

Mumbai to appear and defend its cases but the appellant remained absent for which adjudication orders were issued ex-parte. While conceding that it is difficult to bring out the item wise description of denial of Cenvat Credit from the documents emailed to the Appellant, he submits that such opportunity was availed by the appellant before the Commissioner (Appeals) and after hearing both the sides, orders were passed by the Commissioner (Appeals) with detailed reasoning that needs no interference by the Tribunal.

3. Gone through both the case records. Attention of this Bench is drawn by the Appellant to the request letter of the Appellant addressed to the Commissioner of GST & CE (Appeals-II), B.K.C. Bandra dated 29-9-2017 wherein it had requested for furnishing of the detail of denial of Cenvat Credit. Annexure-D to the appeal memo indicates that request letter dated 24-8-2012 was sent by the Appellant to the respondent Department stating that due to unavailability of details in the Show cause notice, Appellant was not in a position to put forth its defense and accordingly department had sent those bunch of documents via email on 4th June 2013 which Appellant states to be inadequate. Going by the Order-In-Appeal, at para 8, the Commissioner (Appeals) acknowledged that Appellant was taking different excuses but entire Cenvat credit detail was available with it as audit was based on its own record. If this was the fact on record, then it is not understood from the SCN as to why only consolidated figures were shown as entire duty demand against irregular availment of Cenvat Credit without reflection of detail of item wise inadmissibility of credits. It appears that

Appellant was not provided with opportunity to putforth its ground of defense concerning admissibility or inadmissibility of Credits to it during the period under dispute. I find it a fit case which is required to be remand to the adjudicating authority for re-adjudication after providing sufficient opportunity to the Appellant to putforth its defense. Hence the order.

ORDER

4. The Appeal is allowed by way of remand to the adjudicating authority for re-adjudication and determination of the admissibility/inadmissibility of Cenvat credit taken by the Appellant after providing the detail of such refusal of Cenvat Credit to the Appellant. The Appellant is duty bound to participate in the adjudication proceeding, upon notice and produce necessary documents to help the Respondent Department in preparing Invoice-wise co-relation of Cenvat Credit availment. Accordingly, the order passed by the Commissioner of GST & Central Excise (appeals-II), vide Order-in-Appeal No. PK/400/MC/2018 dated 15th May 2018 is hereby set aside.

(Dictated and pronounced in open court)

(DR. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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