CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax EH No. 85195 of 2019

in

Service Tax Appeal No. 87544 of 2018

(Arising out of Order-in-Original No. 134/Commr (RS)/LTU-M/ST/2016-17 dated 31st March 2017 passed by the Commissioner of CGST, Mumbai South)

M/s Shipping Corporation of India …..Appellant
245 Madame Cama Road,
Mumbai

Vs.

Commissioner of CGST, Mumbai South …..Respondent
13th Floor, Air India Bldg.,
Nariman Point, Mumbai

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant
Shri M.K. Sarangi, Addl. Comm(AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86071/2019

DATE OF HEARING : 03.06.2019
DATE OF DECISION : 03.06.2019

PER: C J MATHEW

This appeal of M/s Shipping Corporation of India assails the confirmation of demand of ₹4,69,30,63,000/-, being recovery of amounts held to be due under rule 6(3) of CENVAT Credit Rules, 2004, for not having complied with the obligation to maintain separate sets of accounts for the utilisation of inputs/ input services procured in common for deployment in rendering of taxable and exempt services between 2009 and 2014. Besides interest under section 75 of Finance Act, 1994, penalty of like amount has been imposed under section 78 of Finance Act, 1994.

2. Learned Counsel for the appellant contends that the recovery that is directed in the impugned order is tantamount to denial of the entire CENVAT credit availed by them instead of restricting itself to the reversal of such amounts as are attributable to the exempt services provided by them. Appellant, according to Learned Counsel, renders a number of services and does not dispute the requirement to maintain separate accounts as per CENVAT Credit Rules, 2004. However, during the hearing they had, according to him, informed of reversal of ₹101.78 crores and which, after rectification, was produced before the adjudicating authority along with certification by the Chartered Accountant. He points out that, while the claim of the appellant was noted, the adjudicating authority failed to consider the submission on the ground of insufficiency of evidence.

3. Learned Authorised Representative contends that the provisions are unambiguous; that in the absence of separate set of accounts, the assessee is bound to discharge liability at the prescribed rate on the

exempted services and that the penal provisions are automatically invoked.

4. Considering the submissions made by Learned Counsel of having reversed credit to the extent attributable to utilisation for exempt services and their contention that the documents to evince were made available, we set aside the impugned order and remand the matter back to the original authority for consideration of this claim after giving due opportunity to the appellant for production.

5. Revenue has also filed a miscellaneous application for early hearing. As the matter has been listed for disposal, this application is infructuous and is dismissed.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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