CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 87884 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/105/2017-18 dated 03.04.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Nagpur.)

M/s Balkrishna Industries Ltd. ....Appellant
B-66/MIDC, Aurangabad,
Maharashtra - 431135

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad ....Respondent
N-5, Town Centre, CIDCO,
Aurangabad, Maharashtra- 431030

APPERANCE:

Ms. Puloma Dalal, Advocate for the Appellant
Shri Anil Choudhary, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86246/2019

Date of Hearing: 10.07.2019
Date of Decision: 10.07.2019

Heard on the appeal from both the sides. Learned Counsel for the appellant submits that appellant is a tyre manufacturing Company having export turnover of more than 90 % of its product. It was denied CENVAT credit on certain heads and ultimately Commissioner (Appeals) confirmed such denial in respect of (i) Air

Travel Agent Service, (ii) Modernisation, Repair and Renovation of factory premises, (iii) Event Management and (iv) Hotel bills. She further submits that appellant is eligible for refund but as its manufactured products also had a local market turnover, it availed services on those components and also availed credits thereof. The grounds of rejection of this credits, as pointed by the learned Counsel, were that documentary evidence were not produced before the Commissioner (Appeals) to establish that Air travel was not undertaken for personal use of the employees, civil construction work was not related to repair and maintenance of factory, hotel bills were not paid towards stay of employees for business purposes and Event Management was not covered within the definition of 'input services'. Learned Counsel for the appellant further submits that on the last date of hearing before this Bench, they had produced all documents before the lower authorities but no finding was given basing on those documents regarding admissibility/inadmissibility of CENVAT credit. On being directed she produced sample copies of Air travel bill issued by one M/s Arika Tours & Travels (P) Ltd. which indicates that one Mr. Tanaji Bhosale had travelled to Hong Kong between 09.10.2011 to 12.10.2011 and the tour bill submitted by Mr. Tanaji Bhosale available at page 36 of the additional submission indicates that he was the Manager - Projects who visited Hong Kong to obtain technical detail, scope of equipments and also to review the progress, which demonstratly established that it was not a tour for personal purpose. Likewise, in respect of bill submitted by one M/s Advent Engineering Pvt. Ltd. vide invoice dated 3rd September, 2012, though labour charges for the site was referred as the major head in work undertaken by the service provider, the actual work carried out and its description indicate that the amount was collected towards, drawing and documentation charges for piping with boiler office. Appeal memo from page 78 to 90 contains the written submissions of the appellant made before the Commissioner (Appeals) wherein this appellant had placed detail of all documents including the invoice details of M/s Advent Engineering Pvt. Ltd. at entry No. 822 page 89 and the nature of work is also stated that there to be documentation and drawing charges and those were not considered by the lower authorities. This being the facts on record, with the consent and concurrence of learned AR for the respondent-department this appeal is remanded back for re-adjudication on the basis of documents produced/to be produced before the adjudicating authority where appellant has to establish the nexus between the input and output services since the observation of the Commissioner (Appeals) on Air travel that requirement of foreign trip was not justified for which credit was denied is unacceptable in as much as denial of credit on purchase of drawing and designing for renovation work is also not in conformity to the definition of CENVAT Credit Rules, 2004. Therefore, the order passed by the Commissioner (Appeals) is not sustainable. Hence the order.

ORDER

2. The appeal is allowed by way of remand to the original adjudicating authority for re-adjudication on the basis of above

observation and the order passed by the Commissioner of CGST & Central Excise (Appeals), Nagpur vide Order-in-Appeal No. NGP-1/APPL/105/2017-18 dated 03.04.2018 is hereby set aside. Appellant is duty bound to appear to put-forth its defence upon notice.

(Dictated & pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad