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

APPEAL NO:ST/85830/2018

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0740/2017-18 dated 30.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune]

Lavgan Dockyard Private Limited ***Appellant***

versus

Commissioner of CGST, Kolhapur ***Respondent***

Appearance:

Shri Jay Chheda, C.A. for appellant

Shri O.M.Shivdikar, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing: 27/09/2018
Date of decision: 27/09/2018

ORDER NO: A/88499 / 2018

***Per:* S.K. Mohanty**

Heard both sides and perused the records.

2. The appellant is engaged in the activities of providing taxable services under the category of "shipping management and

maintenance service", "tangible goods", "transport of goods by road" services, defined under the Finance Act, 1994. For the said purpose, the appellant got itself registered with Service Tax Department. The appellant avails Cenvat Credit of service tax paid on the input services. During the disputed period, the appellant had availed Cenvat Credit of service tax paid on site formation and excavation service carried out for construction of road activities. Taking of such credit was disputed by the audit wing of Service Tax Department. Thereafter, the appellant had reversed the Cenvat Credit from its books of account. Subsequently, the Departmenthad initiated show cause proceedings against the appellant, seeking for levy of interest demand and for imposition of penalty. The matter was adjudicated against the appellant, wherein Cenvat Credit amount Rs.9,28,634/- was disallowed and appellant was directed to pay interest under Rule 14 of the Cenvat Credit Rules, 2004. Besides, the adjudication order also imposed penalty under rule 15 (3) of the said rules. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 30.11.2017 has upheld the adjudged demand confirmed on the appellant. Hence, the present appeal was filed by the appellant before this Tribunal.

3. The Learned Consultant appearing for the appellant submits that the inadmissible Cenvat credit has not been utilized for payment of service tax on the taxable output services provided by the appellant.

The appellant has submitted the statement. Showing the summary of Cenvat Credit availed and utilized during the disputed period. Thus, it is the contention of the consultant that since the credit has not been utilized, the provisions of Rule 14 of the Rules cannot be invoked for confirmation of the interest demand. He further submits that since there was no mala fide intention on the part of the appellant in frauding the Government revenue,the provisions of sub-rule (3) of Rule 15 *ibid*cannot also be invoked for imposition of penalty. On the other hand, the Learned AR appears for the Revenue reiterates the findings recorded in the impugned order.

4. The appellant fairly concedes that it is not contesting the services tax demand confirmed on the input service availed by it. Thus, in the present appeal, the issue for consideration is only confined to ascertain, whether interest and penalty can be imposed on the appellant. It is an admitted fact on record that the irregular availed Cenvat Credit had not been utilized by the appellant for payment of service tax on the output services provided by it. Thus, in such eventuality, entering the credit particulars in the Cenvat account should be considered as a mere book entry and therefore, there is no loss of revenue to the Government exchequer. Since the interest liability is compensatory in character and the Government exchequer is not deprived of its legitimate revenue, the provisions of Rule 14 *ibid*can be invoked for confirmation of the interest demand.

Further,the said rule also mandates that in case of utilization of disputedCenvat Credit, the interest liability can only befastened and not otherwise. Therefore, the interest demand confirmed on the appellant cannot be sustained. Since, irregularly availed Cenvat Credit in the present case has notbeen utilized for payment of service tax and such balance was all along available in the appellant's Cenvat account, it cannot be said that the appellant had fraudulent intention in availment of such irregular credit.Hence, I am of the considered view that penalty cannot also be imposed on the appellant under sub-rule (3) of Rule 15 *ibid*.

5. In view of above discussions, the impugned order, so far as it uphold the interest and penalty demand on the appellant is set aside and appeal is allowed in favour of the appellant to such extent.

(Pronounced & Dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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