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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 88260 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/SSP/APPL/011/18-19 dated 19.04.2018 passed by Commissioner of CGST & Central Excise (Appeals), Nashik)

M/s Rishabh Instruments Pvt. Ltd. .....**Appellant**
F-31, MIDC, Satpur,
Nashik - 422011

VERSUS

Commissioner of Central Excise & Service Tax, Nasik .....**Respondent**
Kendra Rajaswa Bhawan,
Old Agra Road,
Gadkari Chowk,
Nasik-422002

Appearance:

Smt. Anjali Hirawat, Advocate for the Appellant
Smt. Anuradha Parab, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87452 / 2019

Date of Hearing: 18.04.2019
Date of Decision: 18.04.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 24.04.2018 passed by the learned Commissioner (Appeals), CGST & Central Excise, Nashik.

2. Brief facts of the case are that the appellant herein, is engaged in the manufacture of electric measuring instruments, falling under Chapter 85 and 90 of the Central Excise Tariff Act, 1985. The appellant avails credit facility provided under the

Cenvat Credit Rules, 2004. During the disputed period, the department initiated show cause proceedings against the appellant, alleging that no services in respect of certain invoices were provided to it by the service provider and that in respect of exempted service (trading activity), the appellant did not maintain separate accounts as envisaged under Rule 6 (3) (i) *ibid*. The matter arising out of the show cause notices was adjudicated vide order dated 27.03.2017, wherein Cenvat credit availed by the appellant was disallowed and the appellant was directed to pay appropriate interest. Besides, the said order also imposed equal penalty under Rule 15 (2) *ibid* read with Section 11 AC of the Central Excise Act, 1944. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 24.04.2018 has set aside the adjudication order, insofar as it had disallowed Cenvat credit amount of Rs.7,19,970/- along with interest, holding that the appellant had exported the service and thus, input services availed as Cenvat credit used for providing the output service should be admissible. However, the impugned order has upheld the demand of Rs.2,17,476/- along with interest, holding that the appellant did not intimate the department regarding exercising of option provided under Rule 6 (3) *ibid* and also did not submit any documentary evidence in respect of the exempted service provide by it and the common input services used for providing both the category of services. The impugned order has reduced the quantum of penalty to Rs.2,17,476/- imposed in the original order.

3. Learned Advocate appearing for the appellant submitted that as per the formula provided under Rule 6 (3) (ii) read with Rule 6 (3A) *ibid*, the appellant had maintained the accounting records and also filed due intimation letter before the department. She also submitted that as per the requirement of the statute, the appellant had proportionately reversed the

quantum of Cenvat credit attributable to common input services used for providing the exempted service.

4. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On perusal of the case records, including the written submission filed by the learned Advocate, I find that the submissions made with regard to filing of intimation regarding maintenance of records and proportionate reversal of Cenvat credit were not properly addressed by the authorities below in the respective orders passed by them. Therefore, I am of the considered view that the matter needs to be re-examined at the original stage regarding compliance of the requirement provided under the Cenvat statute by the appellant.

7. In view of above, after setting aside the impugned order, the matter is remanded to the original authority for deciding the issue afresh on the basis of available records and the submissions/documentary evidences to be submitted by the appellant. Needless to say, opportunity of personal hearing should be granted to the appellant before fresh adjudication of the matter.

8. In the result, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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