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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 89080 of 2018

(Arising out of Order-in-Appeal No. NVK/125/RGD/2018 dated 20.04.2018 passed by Commissioner of Central GST & Central Excise, Raigad)

M/s Arshiya Rail Infrastructure Limited .....**Appellant**
302, Ceejay House, Dr. Annie Besant Road,
Shiv Sagar Estate, Worli,
Mumbai-400018

VERSUS

Commissioner of C.G.ST., Mumbai Central .....**Respondent**
4th Floor, C.Ex.Building,
Churchgate, Mumbai,
Maharashtra-400020

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant
Shri Sudhir B. Mane, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87518/2019

Date of Hearing: 24.10.2019
Date of Decision: 24.10.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant is engaged in providing various logistic infrastructure services to its client and for that purpose, is registered with the service tax under the taxable category of Cargo Handling Service. The appellant avails Cenvat credit in respect of service tax paid on the input services. During the disputed period, Cenvat credit availed on the input services was disputed by the department on the ground that such services were utilized for providing the exempted service. It has been contended by the department that Cenvat credit is not available to the appellant under sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004.

2. The learned Advocate appearing for the appellant submits that the appellant provides the cargo handling service and discharges the service tax liability in respect of such taxable service provided within domestic area and to substantiate such stand, has submitted the invoices issued by the appellant to different clients. He further submits that since handling of export cargo is considered as an exempted service and that the appellant had provided both the category of services i.e. taxable and exempted, its case does not under the purview of sub-rule (1) of Rule 6 ibid and the case is governed under other sub-rules specified there under. Thus, he submits that since the show cause notice had specifically alleged contravention of sub-rule (1) of Rule 6, the said provisions shall not be applicable for recovery of the Cenvat credit availed by the appellant.

3. Learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. In this case, admittedly the appellant was engaged in providing both taxable service as well as the exempted service. In respect of provision of the taxable service, the appellant had duly discharged the service tax liability. Thus, the case of the appellant does not fall exclusively under the provisions of sub-rule (1) of Rule 6 *ibid* inasmuch as it had not provided exclusive exempted service. Hence, confirmation of demand by the authorities below by placing reliance on sub-rule (1) of Rule 6 cannot be sustained for judicial scrutiny.

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

HK