CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87385 OF 2015

WITH

SERVICE TAX CROSS-OBJECTION NO: 91009 of 2016

[Arising out of Order-in-Original No: 21 and 22/STC-IV/MRRR/15-16 dated 16th July 2015 passed by the Commissioner of Service Tax (Audit-I), Mumbai.]

Commissioner of Service Tax- IV
Mumbai
12th Floor, Lotus Info Centre, Parel €
Mumbai – 400013 … ***Appellant***

versus

Patel Integrated Logistics Ltd
Plot No. 48, 5th Floor, Gazdarbandh, North Avenue Road
Santacruz (West), Mumbai - 400054 ***…Respondent***

APPEARANCE:

Shri M Suresh, Joint Commissioner (AR) for the appellant

Shri S S Gupta, Chartered Accountant for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87559 / 2019

DATE OF HEARING: 09/09/2019
DATE OF DECISION: 09/09/2019

PER: C J MATHEW

We find that this appeal of Revenue, arising out of order-in-original no. 21 and 22/STC-IV/MRRR/15-16 dated 16th July 2015 of Commissioner of Service Tax (Audit-I), Mumbai that dropped proceedings for recovery of ₹ 106,21,18,911 and ₹ 35,32,82,556 for 2009-13 and 2013-14 respectively proposed in two notices for having availed credit against ineligible documents as well as the memorandum of cross-objections of M/s Patel Integrated Logistics Limited, the respondent herein, can be disposed of on the basis of preliminary submissions made by both sides.

2. We have heard Learned Authorised Representative and Learned Chartered Accountant appearing for the assessee.

3. The assessee was alleged to have availed ineligible credit as the documents, against which such credit was taken, *viz*, ‘cargo sales report’ purportedly summarising ‘airway bills’, is not in conformity with rule 9(1) of CENVAT Credit Rules, 2004. The impugned order has held that the documentation sufficed for availment of credit. It has been brought to our notice that proceedings, of similar nature, had been initiated at different places and that the Tribunal, in *Patel Air Freight v. Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II [2016 (45) STR 404 (Tri-Hyd)],* has held that

> *‘7. Admittedly, the said document called Cargo Sales Report is not specifically included in the list of documents on which Cenvat credit can be taken, inter alia, by provider of output service envisaged in Rule 9 of the Cenvat Credit Rules, 2004.*

It is not in dispute that the said Cargo Sales Report is only a summarization of Air Way Bills (AWB) issued by the appellants as agents of airlines towards booking of cargo. It is also not in dispute that the said AWBs indicate, inter alia, details like AWB No. (Invoice No.), Service Tax Registration No. of the concerned airline, name of service provider airline, name of service recipient, value, nature of service and service tax amount. In our view, therefore, these AWBs can surely be considered as an eligible invoice or bill for the purposes of the said Rule 9 supra, or for that matter, Rule 4A of the Service Tax Rules, 1994. The legal imbroglio in this case has arisen only because appellants allegedly chose to avail credit on the Cargo Sales Report, which is a fortnightly summary of the Air Way Bills (AWB). It is not the case of the Department that the said Cargo Sales Report shows a higher or lower credit amount different from the total of the AWBs referred to therein. It is also not the case of the Department that the appellants are availing Cenvat credit of service tax not suffered by them. The only ground for denial of such credit is the appellant's availment thereof based on the Cargo Sales Report……..So long as the primary and essential requirements of the procedural Rule have been satisfied, benefit should not be denied on insubstantial grounds. In fact, even the said Rule 9, so vigorously relied by lower authority, lays down that minor inadequacies in the document on which credit is availed should be overlooked, in the Proviso to sub-rule (2) thereof, as reproduced below:

> *PROVIDED that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address provider of output service and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books*

> *of the account of the receiver, he may allow the CENVAT credit.*

4. That, in our view, is academic considering that the present appeal of Revenue has sought to challenge the finding of the adjudicating authority, on the acceptability of 'cargo sales report' for availing credit, with the proposition that the activity of the assessee was not 'output service', within the meaning of rule 2 of CENVAT Credit Rules, 2004, and, hence, the question of acceptability of documentation does not arise. We find, from perusal of the show cause notices, that the only ground raised therein for disallowance of credit is the validity of the documents against which it had been availed. It would appear that the grounds of appeal, as evident from the only substantive prayer, *i.e.*,

> *'ii) In not appreciating and taking into consideration that the assessee is only acting as an intermediary between the Airlines and the client (consignor/consignee) and still holding the assessee as entitled to avail input Cenvat Credit ["Transport of goods by air" - Business Support service], is legal and proper?'*

is beyond the scope of adjudication of the show cause notice and proceedings cannot be remanded back for this purpose.

5. The appeal, therefore, lacks merit and is dismissed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*