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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 87828 of 2018

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/11-18-19 dated 25.04.2018 passed by Commissioner of Central Tax (Appeals-I), Mumbai)

M/s. Arcadia Shipping Ltd. **....Appellant**
222, Tulsaini Chambers,
Nariman Point,
Mumbai-400021

VERSUS

Commissioner of C.G.ST., **.....Respondent**
Mumbai South
13th Floor, Air India Building,
Nariman point,
Mumbai- 400021

Appearance:

Shri Mahesh Raichandani, 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/87629/2019

Date of Hearing: 18.04.2019
Date of Decision: 18.04.2019

Per: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the business of providing customer oriented service in shipping and offshore activities. The appellant is registered with the service tax department for providing various taxable services, defined under section 65 of the Finance Act, 1994. During the course of verification of records under EA-2000 audit, the officers of service tax department observed that for the period 2010-11 to 2014-15, the appellant had shown availment of Cenvat credit particulars at higher side, than the amount shown in the Cenvat register maintained for the said period.

Accordingly, the audit wing observed that the appellant had availed excess Cenvat credit of Rs.20,97,808/-. Further, it was also observed that in the ST-3 returns filed by the appellant for the period October 2014 to March 2015, the appellant had shown the closing balance of Rs.5,81,707/-, without maintaining sufficient balance in the Cenvat register. On the basis of such audit objections, the department initiated show cause proceedings against the appellant, seeking for recovery of the irregularly availed Cenvat credit by the appellant. The matter was adjudicated vide order dated 21.10.2016, wherein Cenvat credit amount of Rs.26,79,515/- along with interest was confirmed and equal amount of penalty was imposed on the appellant under Rule 15 (3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994. On appeal, the learned Commissioner (Appeals-I), CGST & Cx., Mumbai vide the impugned order dated 25.04.2018 has upheld the original order and dismissed the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The learned Advocate appearing for the appellant submitted that both the authorities below have not considered the records maintained by the appellant for arriving at the conclusion that the disputed Cenvat credit was irregularly availed by the appellant. The learned Advocate has also submitted the statement indicating the details of Cenvat credit availed by it and as reflected in the ST-3 returns. He also submitted the Chartered Accountant's certificate to demonstrate that availment of Cenvat credit is in conformity with the Cenvat statute.

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

4. Heard both sides and perused the records.

5. I find that in the grounds of appeal annexed to the appeal memorandum, the appellant has specifically urged that the accounts/records submitted by the appellant during the course of adjudication proceedings were not properly considered by the authorities below. The issue involved in the present case relates to ascertainment of arithmetical accuracy in respect of availment of Cenvat credit, which in my considered opinion, had not been properly addressed by the authorities below. Thus, I am of the view that the matter should be examined afresh by the original authority.

6. In view of above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for de novo adjudication of the matter. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

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

(S.K.Mohanty)
Member (Judicial)

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