

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 2017 of 2012

(Arising out of Order-in-Appeal No. GOA/CEX/GSK/48/2012 dated 22.06.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Goa)

Commissioner of Customs Central Excise-Appellant
Goa
ICE House, EDC Complex, Plot No. 6, Patto,
Panaji Goa-403 001.

Vs.

Cipla Ltd.Respondent
Unit-I, L-139 to L-146,
Verna Industrial Estate,
Verna, Salcette, Goa-403722

APPEARANCE:

Shri Xavier R. Mascarenhas, Superintendent (AR) for the appellant
Shri Ganesh Kumar, C.A. for the respondent

CORAM: Hon'ble Mr Ajay Sharma, Member (Judicial)
Hon'ble Mr Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: A/85865/2023

DATE OF HEARING: 25-01-2023
DATE OF DECISION : 11-05-2023

Per: Ajay Sharma

This appeal has been filed by Revenue from the order dated 22.06.2012 passed by the Commissioner(Appeals), Customs, C. Excise & Service Tax, Panaji, Goa by which the learned Commissioner set aside the Adjudication Order and allowed the appeal filed by the assessee-respondent herein.

2. The issue involved herein is whether the Revenue is justified in recovery of interest amounting to Rs.3,49,000/- on wrongly availed Cenvat Credit by the respondent/ assessee on input services and for appropriating of credit of Rs.24,45,094/- which admittedly the respondent/assessee has already reversed and also whether penalty is imposable on the respondent under the provisions of Rule 15(2), Cenvat Credit Rules, 2004 r/w Section 11AC of Central Excise Act, 1944?

3. The relevant facts of this appeal are stated in brief as follows. During the course of audit conducted by the Central Excise Audit in the month of March, 2008, it has come to their notice that out of the total Cenvat Credit availed by the respondent during the period September, 2005 to September, 2008 they have wrongly availed Input Service Credit of Rs.24,45,094/- towards Service Tax paid on input services which were used in the manufacture of non-excisable goods and no separate accounts were maintained for input service credit availed on input services used for the manufacture of non-excisable goods. The fact that separate accounts were not maintained in respect of Cenvat Credit of input service availed on input services used in the manufacture of excisable goods and non-excisable goods was not brought to the notice of Central Excise Department till the date of Central Excise Audit. On being pointed out by the audit team, the respondent accepted the discrepancy and reversed the amount of 24,45,094/- through their Cenvat credit account on 31.3.2008 but they failed to pay any interest on the aforesaid wrongly availed input service credit. Accordingly a show cause cum demand notice dated 4.7.2011 was issued to them for

appropriation of the amount of Rs.24,45,094/- reversed by them and also claiming interest to the tune of Rs.3,49,000/- on the said amount alongwith penalty u/r.15 ibid r/w. S.11AC ibid.

4. The Adjudicating Authority i.e. Joint Commissioner, Central Excise & Service Tax, Panaji-Goa vide Order-in-Original dated 24.1.2012 by a detailed Adjudication Order, confirmed the demand raised in the show cause notice alongwith interest and penalty. On appeal filed by the respondent herein, the learned Commissioner vide impugned order dated 22.6.2012 set aside the Order-in-Original with consequential relief.

5. We have heard learned Authorised Representative for the Revenue and learned Chartered Accountant for the respondent and perused the case records including the written submissions and case laws placed on record by the learned Authorised Representative. After going through the impugned order we are of the view that the impugned order has been passed in a most unusual way. There is no reasoning given in reaching the conclusion. Although it's a detailed order but in all those pages firstly the submissions of assessess's has been recorded followed by the submissions of revenue and thereafter in last two lines it has been concluded that *"In view of the above, the impugned order is set aside, with consequential relief as per law. Appeal allowed."*

6. There is a basic principle that *justice need not only be done but also seen to be done*. There is neither any reasoning nor any finding that too while setting aside the reasoned order passed by the adjudicating authority. Assessee's appeal was allowed by way of non-speaking order

and entire adjudication order was set aside after citing one decision of Hon'ble Karnataka High Court which seems to be limited to the issue of interest liability. Learned Commissioner ought to have, after referring the contentions of the appellant, dealt with the same on merits and also ought to have dealt with each finding/reasoning recorded by the adjudicating authority in its Order-in-Original before setting aside the said order. Therefore we are left with no other option but to set aside the impugned order and remand the matter back to the learned Commissioner (Appeals) for fresh disposal on its own merits in accordance with law after giving reasonable opportunity of hearing to both the side and also by giving reasoning/findings while arriving at any conclusion in the appeal filed by the assessee. We are making it clear that we have not gone into merits of the appeal. Since the appeal is quiet old therefore we hope and trust that the learned Commissioner (Appeal) will decide the appeal at the earliest preferably within a period of two month from the date of production of certified copy of this order.

7. The Appeal is accordingly allowed by way of remand.

(Order pronounced in Open Court on 11.05.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Ajay Sharma)
Member (Judicial)