CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No.86802 of 2015

(Arising out of Order-in-Original No. 02/MAK(02)PC/RGD/2015-16 dated 08.06.2015 passed by the Principal Commissioner of Central Excise, Raigad)

M/s Castrol India Ltd. .... **Appellant**
A-8/A-14, MIDC, Patalganga Industrial Area,
P.O. Rasayani, Raigad – 410 220

Versus

Commissioner of Central Excise,Raigad .... **Respondent**
4th Floor, Utpad Shulk Bhavan, Plot No. 1, Sector-17,
Khandeshwar, New Mumbai – 410 206

Appearance:

Shri Mihir Deshmukh, Advocate for the Appellant

Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85657/2024

Date of Hearing: 15.05.2024

Date of Decision: 15.05.2024

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged in manufacture of the excisable goods, falling under Chapters No. 27, 34, 38 & 39 of the First Schedule to Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on inputs and Service Tax paid on the input services. During the disputed period, while conducting audit of accounts under EA 2000, the Department had observed that the appellants had availed Service Tax credit on the bills/invoices, wherein Service Tax Registration Nos. of the service providers were not mentioned. Since the requirement of Rule 4A of the Service Tax Rules, 1994 read with Rule 9 of the CENVAT Credit Rules, 2004 were not complied with by the appellants, the Department initiated show-cause proceedings against the appellants, seeking for denial of the CENVAT Credit totaling to an amount of Rs.66,55,823/- along with interest and also proposed for recovery of penalty. The matter arising out of the show-cause notice dated 30.01.2013 was adjudicated vide Order-in-Original dated 16.01.2014, wherein the original authority had confirmed the proposals made in the show-cause notice. The said adjudication order was assailed by the appellants before the Tribunal and the Tribunal vide order dated 19.05.2014 has remanded the matter back to the original authority for passing of *de novo* adjudication order. The relevant paragraph in the said order is quoted herein below: -

> *"5.2 The short question for consideration is whether the appellant is entitled to the credit availed on the ground that the registration number of the service provider was not indicated on the invoices. It is the fact on the record that during the adjudication proceedings, the appellant had provided to the department, the registration numbers of the service providers. Therefore, the adjudicating authority could have easily verified whether these service providers were registered with the department at the relevant time and whether they had discharged the service tax liability in accordance with the law. He has unnecessarily chosen to raise the level of litigation by denying the credit as if it is Tribunal's job to get verification done. In these circumstances, we are of the view that the matter has to be remanded back to the adjudicating authority for verification of the registration numbers declared by the appellant and also for verifying whether the service tax indicated in the invoices was paid to the exchequer or not."*

Pursuant to the remand direction contained in the Tribunal's order dated 19.05.2014, the original authority took up the de novo adjudication proceedings and passed the impugned order dated 08.06.2015, wherein CENVAT Credit availed by the appellant to the tune of Rs.68,20,433/- was disallowed along with interest and equal amount of penalty was imposed on the appellant. In support of denial of the CENVAT benefit, the original authority in the impugned order has categorized the credit availed by the appellant. In category - A, the original authority has stated that the appellant did not submit the registration numbers of the service providers; in category – B, he has stated that the credit had been availed prior to the date of issuance of the registration certificate in favour of the service providers; and in respect of category – C, he has held that the service providers were registered during the relevant time when the credit was availed by the appellants. However, he has disallowed the CENVAT Credit amounting to Rs.64,91,213/- i.e. the amount of CENVAT Credit involved in the transactions after deducting thereof category A & category B on the ground that the requirement of other provisions contained in the CENVAT statute has not been complied with by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that the Tribunal vide order dated 19.05.2014 has remanded the matter back to the original authority for the limited purpose of verification of the registration certificate issued by the service providers. The original authority in category – A & B has held that no registration certificates were submitted by the appellants in six cases totally amounting to Rs.1,00,717/- and that the credit was availed prior to the date of obtaining the registration by the service provider in three cases totally amounting to Rs.63,893/-. Further, in respect of three service providers viz. Niche Business Promotions Pvt. Ltd., HDFC Bank Ltd., Shree Ganesh Mailing Services, the appellant has not submitted the service tax registration numbers for verification. Thus, the original authority could not undertake any verification with respect to these transactions totally amounting to a CENVAT Credit of Rs.24,584/-. Since the requirement of Rule 4A(1) ibid read with Rule 9 ibid have not been fulfilled by the appellants, we are of the view that the denial of CENVAT Credit in respect of category – A & B service is proper and justified.

4. With regard to the category – C service, we find that the Tribunal while remanding the matter back to the original authority, had made categorical finding for verification of the registration numbers alone declared by the appellant. It is admitted fact on record that the original authority has examined the registration certificate submitted by the appellant and has held that the service providers during the material time were registered with the Service Tax Department. Since the specific requirement as per the Tribunal's order was to examine the registration certificate and the said exercise has been done by the original authority, there was no scope for the original authority to travel beyond the scope of remand, to deny the CENVAT benefit to the appellants. Therefore, in our considered view, the impugned order, to the extent it has denied the CENVAT benefit amounting to Rs.64,66,629/- is to be set aside and appeal to such extent is to be allowed in favour of the appellants.

5. We also would like to mention as a matter of clarification that in the impugned order dated 08.06.2015, the original authority has inadvertently added the CENVAT Credit amount of Rs.1,64,610/- in respect of category A & B twice with the total demand of Rs.66,55,823/- to arrive at the amount of Rs.68,20,433/- for disallowing the CENVAT Credit. However, this is factually incorrect as it is evident from the show-cause notice dated 30.01.2013, and the first Order-in-Original dated 16.01.2014, passed by the same original authority, wherein the total amount of CENVAT Credit demand is clearly shown as Rs.66,55,823/-. Further, either of the parties had not brought to our notice that such factual error has been rectified by way of a corrigendum issued for rectification of the same. Thus, we do not take into account the figure of Rs.68,20,433/- for the purpose of this order.

6. In view of the foregoing discussions, the impugned order is set aside with regard to the CENVAT demand of Rs.64,66,629/- confirmed on the appellants. However, the amount of Rs.1,89,194/- is disallowed being not eligible to take CENVAT Credit as discussed by us in paragraph 3 above. Thus, the interest liability as well as the penalty imposed in the original order on such disallowance of CENVAT Credit totally amounting to Rs.1,89,194/- should accordingly be computed for the purpose of confirmation of the interest and penalty in respect of the disallowance amount of CENVAT Credit.

7. In the result, the appeal is partly allowed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha