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

REGIONAL BENCH - COURT NO. 02

**Service Tax Appeal No. 85615 of 2018**

(Arising out of Order-in-Appeal No. MKK/160/RGD APP/2017 dt. 01.11.2017 passed by Commissioner of Central Tax (Appeals), Raigad)

**M/s DBC Port Logistics** **.....Appellant**
Container Freight Station, JNPT, Village-Sonari, Tal-Uran, Raigad, Maharashtra - 400702

*VERSUS*

**Commissioner of Central Excise Belapur** **.....Respondent**
5th Floor CGO Complex, CBD Belapur, Navi Mumbai – 400 614

**WITH**

**Service Tax Appeal No. 89796 of 2018**

(Arising out of Order-in-Appeal No. MKK/160/RGD APP/2017 dt. 01.11.2017 passed by Commissioner of Central Tax (Appeals), Raigad)

**M/s DBC Port Logistics** **.....Appellant**
Container Freight Station, JNPT, Village-Sonari, Tal-Uran, Raigad, Maharashtra - 400702

*VERSUS*

**Commissioner of Central Excise Belapur** **.....Respondent**
5th Floor CGO Complex, CBD Belapur, Navi Mumbai – 400 614

**Appearance:**

Shri Shailesh P. Sheth, Advocate for the Appellants
Shri Sudhir Mane, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO. A/87200-87201/2019**

Date of Hearing: 15.11.2019

Date of Decision: 15.11.2019

**Per: S.K. MOHANTY**

Heard both sides and perused the records.

2. Reversal of Cenvat Credit availed on common input services used for providing both taxable as well as exempted service is the subject matter of present dispute. The formula adopted by the appellant as per the provisions of Rule 6 of the Cenvat Credit Rule, 2004 was objected to by the department and excess reversal for credit as claimed by the appellant was also not accepted by the department and accordingly, proceedings were initiated for recovery of the adjudged service tax demand on the appellant.

3. I find that on an identical issue with regard to reversal of Cenvat Credit under Rule 6 *ibid,* this Tribunal in the case of the appellant itself, vide order dated 17.10.2016 has remanded the matter to the original authority for *de novo* adjudication. The period involved in the said decided case is upto September 2011. The present show cause notice has issued for the period April 2011 to March 2013. In view of the fact that the issues decided by the Tribunal vide order dt. 17.10.2016 are identical to the

issues involved in the present case, I am of the view that the present appeals should also be allowed by way of remand to the original authority. With regard to the merits of the case, I am not expressing any opinion at this juncture. The original authority should deal with all the aspects as per the relevant statutory provisions and also should look into the observations made by the Tribunal vide order dt.17.10.2016 for arriving at proper conclusion on the issues involved in this case. Accordingly, the matter is remanded to the original authority for de novo adjudication. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

3. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in the open court)

**(S.K.Mohanty)**
**Member (Judicial)**

*Sm*