(2021) 03 CESTAT CK 0072

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40216 Of 2020

M/s. Saravana Stocks Pvt. Ltd. APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 6(3A)

Citation : (2021) 03 CESTAT CK 0072

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : M.N. Bharathi, L. Nandakumar

Final Decision : Allowed

Judgement

1. Brief facts are that the appellants are engaged in providing 'Stock Broking Service' and 'Banking and Other Financial Services'. They were using common input services for providing these output services. They also reversed the proportionate credit on the credit availed on the service tax on such input services as these output services are exempted service. The department was of the view that for the period April 2016 to June 2017, the appellant has not reversed the correct amount and that they have not furnished the workings for arriving at the amount reversed by them. For this, Show Cause Notice (Statement of Demand dated 11.4.2019) was issued which culminated in the passing of the Order in Original wherein the demand was confirmed. Against this, appellant preferred appeal before Commissioner (Appeals) who rejected the appeal filed by the appellant. Hence this appeal.

2. On behalf of the appellant, ld. Counsel Shri M.N. Bharathi appeared and argued the matter. He adverted to para 4 of the Show Cause Notice. He submitted that the appellant has reversed an amount of Rs.43,979/- for the period from April 2016 to March 2017 and from April 2017 to June 2017. The department was of the view that the appellant has not given the working for arriving at the amount for which the Show Cause Notice has been issued. It is

submitted by him that the appellant had furnished details of such amount which was not accepted nor considered by the department. During the time of adjudication also, the appellant had given details of the proportionate credit reversed by them. He prayed that the appeal may be allowed.

3. The ld. AR Shri I. Nandakumar supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of records as well as after hearing both sides, I find that the issue is confined to the lack of knowledge of the department as to how the amount of Rs.43,979/- has been arrived by the assessee for reversing the proportionate credit. The only allegation seen in the Show Cause Notice is in para 4 which is as under:-

"Noticee informed vide their letters dated 4.10.2018 and 13.3.2019 that they had reversed a sum of Rs.43,979/- (Rs. 36,148/- for the period April 2016 to March 2017 and Rs.7,831/- for April 2017 to June 2017). However, the workings for arriving at the amount for the reversal or the provisions of Rule based on which such reversal was affected is not furnished by them."

6. The department does not contend that the appellant has to reverse any other amount or that the amount reversed is incorrect. It only confines as to how the appellant has worked out the said amount. I do not find any merits in the confirmation of demand. Though in the Order in Original as well as in the first appellate authority's order, the department has discussed that the appellant has not put forward evidence to show that they had intimated the department as to the reversal of credit, there is no allegation in the Show Cause Notice that the appellant has not complied with the procedure of intimating the department as required under Rule 6(3A) of CENVAT Credit Rules. Unless the department is able to prove that the amount reversed by them is not correct, the demand raised merely by saying that the appellant has not shown workings for arriving at the amount is unjustified. Be that as it may, in the case of Alstom T&D India Ltd. Vs. CGST & CE, Chennai - 2019 (370) ELT 625 (Tri. Chennai), the Tribunal has held that non-intimation to the department with respect to reversal of credit is only a procedural requirement and that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated in open court)

