(2023) 05 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 87293 Of 2019

M/S. Varroc Engg. Pvt. Ltd. Plot No. M/191/3, MIDC, Waluj — APPELLANT

Vs

Commissioner Of CGST & Central Excise, N-5, Town Centre, CIDCO, Aurangabad — RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(l), 7, 7(d)

Citation : (2023) 05 CESTAT CK 0032

Hon'ble Judges : Ajay Sharma, Member (J)

Bench : Single Bench

Advocate : Suyog Bhave, A.K. Jha

Final Decision : Allowed

Judgement

Ajay Sharma, Member (J)

1. This appeal has been filed assailing the order dated 17.10.2018 passed by Commissioner (Appeals), GST & Central Excise, Nashik by which the appeal was partly allowed and the demand of wrongly availed of Cenvat credit to the tune of Rs.12,51,450/- was upheld by the learned Commissioner (Appeals).

2. The appellant herein is aggrieved with the denial of Cenvat credit of Rs.12,51,450/-. The said credit was availed by the appellant of the service tax paid on the Banking & Financial Services on the strength of invoice dated 4.5.2013 issued by the corporate office of the appellant as 'Input Service Distributor'. Initially, the show cause notice dated 31.3.2017 was issued for recovery of the amount of Rs.12,51,451/- wrongly availed in violation of Rule 7 of Cenvat Credit Rules, 2004 and also for recovery of another sum of Rs.2,91,318/- which, according to the department, was availed in violation of the provisions of Rule 4(2) ibid and the same was confirmed by the Adjudicating authority vide order-in-original dated 29.1.2017. On appeal filed by the Appellant, 1st Appellate Authority i.e. the Commissioner (Appeals) partly allowed

the appeal by allowing the Cenvat credit availed of Rs.2,91,318/- but rejected the Cenvat Credit of Rs.12,51,450/- on the ground that the service tax was paid on advisory service which does not fit into the definition of input service as provided u/s. 2(l) of Cenvat Credit Rules, 2004 w.e.f. 1.4.2011 and therefore the same is not admissible on this ground alone.

3. Learned counsel for the appellant raised a preliminary submission that the Cenvat Credit of Rs. Rs.12,51,450/- has been denied to the appellant, as per the show cause notice as well as the adjudication order, being not in conformity with Rule 7(d) ibid whereas the same has been rejected by the 1st appellate authority on the ground of being 'not admissible' as per Rule 2(l) ibid which was not the case anywhere in the show cause notice and therefore the learned Commissioner has travelled beyond the show cause notice and the impugned order is liable to be set aside on this ground alone. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order.

4. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions filed by learned counsel. Although learned counsel raised other issues also but since the preliminary submission goes to the root of the matter therefore I prefer to deal with the preliminary submission firstly. Undoubtedly, the show cause notice raised the demand on the basis of violation of Rule 7(d) of Cenvat Credit Rules, 2004 in respect of the credit availed by the appellant on the Input Banking and Financial Services rendered by the Citibank and the same was confirmed by the adjudicating authority on the said violation whereas the learned Commissioner (Appeals) on his own upheld the demand while resorting to Rule 2(l) ibid which defines input service. The said Rule 7(d) was nowhere discussed in the impugned order as para 8.7. of the impugned order recorded that '…Therefore it does not fit into the definition of input service defined under Rule 2(l) of Cenvat credit Rules, 2004 w.e.f. 01.04.2011. Hence Cenvat Credit of Service Tax paid on advisory service of Rs.12,51,450/- is not admissible to the appellant on this ground alone.' [Emphasis supplied]. Therefore I have no hesitation in holding that the learned Commissioner has gone beyond the scope of show cause notice and beyond the challenge to the adjudication order. Resultantly, the impugned order is liable to be set aside on this ground alone without going into the merits of the matter. So far as doctrine of merger, as raised by learned counsel is concerned, I am of the opinion that the same cannot be applied in the facts of this case.

5. Accordingly the impugned order is set aside to the extent of denial of Cenvat credit amounting to Rs.12,51,450/- and the matter is remanded back to the 1st Appellate Authority to decide the appeal afresh after following the principle of natural justice.

The appellant is directed to place all the relevant documents and case laws before the said authority at the time of hearing. The appeal is therefore allowed by way of remand.

