CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10456 of 2015-SM

[Arising out of Order-in-Original/Appeal No. CCESA-VAD-APP-II-SSP-012014-15 dated 28.11.2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Associate Cooperative Bank Limited .... **Appellant**
Surat Vankar Sangh Building, Ring Road
SURAT, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-ii .... **Respondent**
New C.Ex Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri S. Suryanarayanan, Advocate for the Appellants
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 04.01.2024

ORDER NO. 10062/2024

RAMESH NAIR :

In the present case, the issue involved is whether the appellant is value of liable to pay 6% of the value of exempted service namely cash credit, overdraft facilities, discounting of bills, interest on loan etc. when the appellant has availed Cenvat credit on common Input service.

2. Shri S. Suryanarayanan, learned Counsel appearing on behalf of the appellant is not contesting merits of the case however, he is contesting the issue on limitation. It is his submission that the appellant is a Cooperative Bank and registered under Service Tax and paying service tax on the taxable service. They are filing ST-3 returns regularly wherein they have declared availment of Cenvat credit. The activity of the bank is known to the public at large therefore the services whether exempted or taxable was not suppressed by the bank. He further indicates the correspondence made with the department since April 2010 by letter dated 22.04.2010, 23.05.2012 and 06.06.2012. On this basis, it is his submission that there is no suppression

of facts. Accordingly, the demand of 6% under Rule 6(3) of Cenvat Credit Rules, 2004 is not sustainable on the ground of limitation.

3. Shri Himanshu P Shrimali, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, I find that the appellant being a Co-operative Bank and registered under Service Tax and paying service tax on the services. They are also availing Cenvat credit of service tax and all the details of payment of service tax and availment of credit declared in the ST-3 returns regularly. The issue is liability of 6% of the value of exempted services i.e. cash credit, overdraft facilities, discounting of bills, interest on loan etc. is well known to public at large which is normally a business of Bank therefore, It cannot be said that appellant have suppressed any fact with intent to evade payment of service tax or availment of credit. On this issue, as pointed out by the learned Counsel, the correspondence was going on since 22.04.2010 and various letters were exchanged as detailed above. With these facts, I do not find any suppression of fact or malafide on the part of the appellant. The period involved is 2008 to 2011, however, the show cause notice was issued beyond the normal period i.e. on 01.03.2013 therefore, the entire period of demand is beyond limitation. Accordingly, in terms of Section 73(1) of Finance Act, 1994, the demand is not sustainable only on the ground of limitation itself. Hence, the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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