CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 11886 OF 2015

(Arising out of OIA-VAD-EXCUS-003-APP-243-2015-16 dated 02/09/2015 passed by Commissioner of Central Excise, Customs and Service Tax-ANAND)

BUILD QUICK INFRASTRUCTURE PVT LTD **Appellant**
504, Anand,
Gujarat

Vs.

CCE-ANAND **Respondent**
Office of the Commissioner,
Central Excise, Customs & Service Tax, Central Excise Building,
Nr. Juna Dadar, Behind Old Bus Depot Anand
Gujarat-388001

Appearance:
Present for the Appellant :Shri Mrugesh Pandya, Advocates
Present for the Respondent: Shri Anand Kumar, Superintendent (AR)

CORAM:
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. 11032/2024

Date of Hearing : **13/05/2024**
Date of Decision : **13/05/2024**

RAJU

This appeal has been filed by Ram Ratan Wires Ltd against confirmation of demand of duty and imposition of penalty under Section 76 and 78.

2. Learned Counsel for the appellant pointed out that in the month of April, 2008. In the quarter January to March 2008 they had accidentally paid excess duty, which they had adjusted in the next quarter in terms of Rule 6 (4)(A) of the Service Tax Rules, 1994. The show cause notice has been issued on the strength of the ST-3 return filed by them and information contained therein. He pointed out that the fact regarding adjustment in terms of Rule 6(4A) is replaced in ST 3 return. He pointed out that extended period of limitation has been invoked when the entire information was available at the ST 3 return filed by them. They could not have evaded any payment of duty or availed any extra benefit. He pointed out that the only violation of law that has been pointed out relates to non-communication of the fact regarding such

adjustment by way of a letter. He pointed out that the said information is available in the ST 3 return and that should be treated as proper communication of the said effect.

3. Learned AR relies on the decision of the Hon'ble Apex Court in the case of Hari Chand Shri Gopal [2010 (260) ELT 3 SC]. He stated that the said decision says that the notification benefit should be subject to very strict interpretation of the notification of the conditions therein.

4. I have considered rival submissions. I find that the ST-3 return filed by the appellant in April, 2008 contained the fact that they had adjusted credit in the said quarter. The entire show cause notice has been based on the said adjustment made in the ST 3 return. Therefore, there cannot be treated any suppression of fact on the part of appellant. The show cause notice has been issued invoking extended period of limitation. Since, the entire fact of adjustment was declared in the ST 3 return filed by appellant, the show cause notice itself is barred by limitation as there is no suppression of facts, pointed out that the revenue in the show cause notice.

4.1 Even otherwise issues covered by the decision of Tribunal in the case of Plantech Consultant Pvt Ltd 2016 (41) STR 850 (Tri. Mumbai):-

> *"6.1 As regard adjustment of excess paid service tax during the period May, 2006-July, 2006 and the adjustment of the same in the month of August, 2006 is squarely in terms of sub-rule (4A) of Rule 6 of Service Tax Rules, which is reproduced below:*
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> *"(4A) Notwithstanding anything contained in sub-rule (4) where an assessee has opted for registration under sub- rule (2) of rule 4 these rules and has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, for the reason of not receiving details of payments received towards the value of the taxable services at his other premises of offices, the assessee may adjust such excess amount so paid as service tax by his against his service tax liability for the subsequent period and the details of such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment"*

From the above sub-rule, it is permitted that excess paid service tax for the month or quarter can be adjusted in the next month or quarter. In the present case the excess paid service tax during the period May, 2006 to July, 2006 was adjusted against service tax liability of August, 2006.

6.2 As regard intimation to the Jurisdictional Superintendent of Central Excise regarding the such adjustment, we find that even though appellant have not specifically intimidated to the Superintendent in this regard but adjustment was declared in their ST3 returns, accordingly intimation of such adjustment stand made to the department. Even if it is considered that the said procedure was not strictly adhered to, at the most it is a procedural lapse, merely for this procedure lapse the fact that the excess amount was paid could not be deviated. Moreover, amount which was paid in excess, is neither the service tax nor an amount which was payable by the appellant, therefore in any case the said amount cannot be permitted to be retained by the Government. The only option is either to refund that amount or allow adjustment. In our view, the adjustment is very appropriate and favourable to Revenue as compared to the refund. For this reason also the adjustment cannot be held as illegal. We have gone through judgments cited by the Id. Counsel on this issue and found that adjustment of excess paid Service Tax has been allowed in various cases. In view of above position, we are of the considered view that the adjustment made by the appellant of the excess paid amount in the subsequent service tax liability is absolutely in order."

5. Revenue has relied on decision in case of Hari Chand Sri Gopal (Supra). I find that the said decision only pertains to interpretation of exemption notification however in the instant case interpretation of rules are being interpreted and therefore, the said decision does not apply in the instant case.

6. In view of above I do not find any merit in the impugned order. The same is set aside and appeal is allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

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