CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70285 of 2019
WITH
Service Tax Cross Objection No.70406 of 2019

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/192/2018-19 dated 09/07/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Ghaziabad)

Commissioner of Central Goods &

Service Tax, Meerut .....Appellant

(Mangal Pandey Nagar, Meerut-250005)

VERSUS

M/s B.N. Viz. And Others, ...Respondent

(Mansarover Shoping Complex, Delhi Road, Moradabad)

APPEARANCE:

Shri A.K. Choudhary, Authorised Representative for the Appellant
Shri Dharmendra Srivastava, Chartered Accountant & Shri Suhail, Advocate for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70498/2024

DATE OF HEARING : 30 July, 2024
DATE OF DECISION : 30 July, 2024

SANJIV SRIVASTAVA:

This appeal filed by the Revenue is directed against Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/192/2018-19 dated 09/07/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Ghaziabad. By the impugned order following has been held:-

"6 I have carefully gone through the facts and records of the case as well as the submissions made by both the appellants Since, both the appeals have been filed against the impugned order and the issues involved are

interlinked, I take up both the appeals together for disposal through this common order. I find that the demand of Service Tax has been made on the basis of tally data resumed by the department in this regard, I find that the SCN alleges that print outs of tally data of both Mis M.P. and appellant no. 2 for the FY 2013-14 to 2015-16 (up to January, 2016) for sales accounts & indirect incomes was produced by the accountant of Mis M.P. The SCN further alleges that original billing (for room, banquet and conference hall) was in the head of M/s M.P. and entry of suppressed bills (for room, banquet and conference hall) was made in the head of appellant no. 2. I further find that though appellant no 2 has been made a noticee to the SCN, but Mis M.P. has not been made noticee to the said SCN. though the said documents were handed over by the accountant of M/s M.P. Even in para 8.2. the SCN mentions the income under various heads separately for M/s MP and the appellant no. 2. No basis has been discussed for taking the figures maintained by M/s M.P as the correct figures representing the values of the taxable services alleged to have been provided by the appellant no. 2. Besides, no cogent reasons have been provided for doubting the authenticity of the records of the appellant no. 2 including audited balance sheets, which have been stated by the appellant no. 1 in his statement dated 11.07 2016 to represent the correct figures. I therefore find that the SCN suffers from serious deficiency as discussed above.

6.1 I further find that there is no corroborating evidence to substantiate that the alleged taxable figures shown in the head of M/s M.P. were against the services provided by appellant no. 2. There is no mention of parallel invoices, money transaction, any confirmation from any of the service recipients, party wise ledger accounts, payments received/made etc. The allegations made in the SCN have a parallel and are analogous to clandestine removal of excisable goods, and as mentioned above are without any *corroborative evidence. The ratio of the decision of the Hon'ble CESTAT, Delhi, in the case of R. A. Castings Pvt. Ltd. Vs CCE, Meerut-1, as reported in 2009 (237) ELT 0674, (relevant part reproduced below) is equally applicable to the issue in hand though the same is in the context of the excisable goods.*

"22. The clandestine manufacture and removal of excisable goods is to be proved by tangible, direct, affirmative and incontrovertible evidences relating to:-

(i) Receipt of raw material inside the factory premises, and non-accountal thereof in the statutory records,

(ii) Utilization of such raw material for clandestine manufacture of finished goods,

(iii) Manufacture of finished goods with reference to installed capacity, consumption of electricity, labour employed and payment made to them, packing material used, records of security officers, discrepancy in the stock of raw materials and final products;

(iv) Clandestine removal of goods with reference to entry of vehicle/truck in the factory premises, loading of goods therein, security gate records, transporters documents, such as 1. Rs, statements of lorry drivers, entries at different check posts, forms of the Commercial Tax Department and the receipt by the consignees;

(v) Amount received from the consignees, statement of the consignees, receipts of sale proceeds by the consignor and its disposal.

In the instant case, no such evidences to the above effect have been brought on record."

The said order of the Tribunal was upheld by Hon'ble High Court of Allahabad, as reported in 2011(269) ELT 337 and further maintained by the Hon'ble Supreme Court of India, as reported in 2011(269) ELT A 108.

6.2 I find that demand of the Service Tax, based on the computer print outs of M/s M. P, made against the appellant no. 2, is without any corroboration, whatsoever, to establish that the appellant no. 2 provided taxable services, the value of which was over and above the accounts maintained by the said appellant. In the absence of any corroboration to establish the accuracy and authenticity of the records maintained by M/s M. P. (separately registered) as far as the demand against the appellant no. 2 is concerned, the allegation of providing taxable services without payment of appropriate Service Tax cannot sustain.

6.3 The SCN and the impugned order have placed reliance of the statement of accountant of M/s M.P., which as per the appellant no. 2 were not cross verified. In this regard, I find that Hon'ble CESTAT, New Delhi, in the case of M/s Hissar Pipes Pvt. Ltd. Vs CCE, Rohtak, as reported in 2015(317) ELT 136, has held as under:

> *5. Further, the Tribunal in the case of M/s. Tejwal Dyestuff Industries v. CCE Ahmedabad (2007 (216) ELT 310 (Tri-Ahmd)) has observed that the Revenue Officers, after recording of confessional statement believes that the same has put an end to the investigations and does not carry the matter for further investigation. Though the confessionals statement may be the starting point of investigations but in view of the other evidence available on record and in the absence of the other evidence indicating. clandestine removal, the same cannot be made the sole basis for deciding against the assessee. To the same effect is the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Dhingra Metal Works 2010-TIOL-693-HC-DEL-IT laying down that though an admission is extremely important piece of evidence, it cannot be said to be conclusive. In view of the above, I find no merits in*

> *the impugned order. The same are accordingly set aside and appeal is allowed with consequential relief to the appellant no. 2.*

Moreover, Hon'ble Tribunal-Chennai, in the case of CCE, Coimbatore Vs Sangamitra Cotton Mills (P) Ltd., as reported in 2004(163) ELT 472, has held as under:

> *"I note that the case has been built on the basis of the seized notebook and the file. There is no evidence of the assessee committing the offence of removal of goods clandestinely There is no evidence of use of inputs to prove that there was manufacture of product. There is no evidence of clearance of final goods without payment of duty. There is no statement to show as to from whom the appellant no. 2 purchased the raw material and there is no evidence of use of electricity, receipt of sale consideration to prove the event of manufacture and clearance of goods clandestinely. The Tribunal in the judgment relied by the Commissioner (Appeals) has clearly laid down that there has to be concrete avidence to prove the charge of manufacture and sale of goods without payment of duty In the absence of evidence, the Commissioner was justified in setting aside the Order-in- Original. Similarly, the entries in the notebook or details contained in the file is not sufficient to prove the charge of clandestine removal as noted in several judgments of the Tribunal relied by the Commissioner (Appeals)......."*

As discussed above, no corroborating evidence has been adduced by the department to substantiate the allegations made based on statement of the accountant of M/s M.P and accordingly, the same cannot be the basis for confirming any demand.

6.4 The appellant no. 2 has contended that the demand on miscellaneous income has been raised without ascertaining *the nature of income and its liability to tax. The adjudicating authority, in this regard, has mentioned that w.e.f 01.07.2012, all services other than those in negative list were taxable and since, the appellant no. 2 had not co-operated in investigation therefore they themselves were to be blamed. I find the above reasons and logic for confirming the demand in respect of miscellaneous income quite untenable. The adjudicating authority has confirmed the demand without ascertaining whether any taxable services were provided against the said income. The allegation that the appellant did not cooperate in the investigation is also without much force as statements of concerned persons were recorded and a substantial amount was also got deposited from the appellant as admitted tax liability.*

6.5 The appellant no. 2 has also contended that Service Tax has been demanded on room rents, where the room tariff was less than Rs 1000/- and the demand of Service Tax on sale of liquor is also not maintainable as the bar is separate from the restaurant and is not part of it. In this regard, I find that the adjudicating authority has himself stated that as per Notification No. 31/2011-ST there is no Service Tax liability on room rent when the room tariff is less than Rs 1000/-. I further find that the SCN itself speaks of catering/food/bar/wine sale and as per appellant no. 2 VAT had been paid on these sales and to substantiate the same copies of UPVAT returns have also been submitted. Hon'ble Apex court, in the case of Imagic Creative Pvt. Ltd. Vs C Com Taxes, as reported in 2008(009) STR 0337, has held that 'payment of Service tax and VAT mutually exclusive Accordingly, no Service Tax can be levied on that portion where VAT has been paid on sale. Moreover, abatement is permissible in cases where there is composite sale of goods as well service. None of the relevant factors/aspects, as mentioned above, have been considered by the adjudicating authority. The *demand confirmed is not based on any credible and sustainable piece of evidence. The same is, therefore, not sustainable.*

6.6 Regarding, the imposition of penalty under Section 78A of the Act, I find that the same is imposable for offences by director, manager, secretary or other officer of a company and here in this case the entity is a partnership firm and not a company. A partnership firm is not juristic entity and does not have existence independent of its partners. Hon'ble High Court, Mumbai, in the case of Amritlakshmi Machine Works Vs CC(Imp), as reported in 2017(052) STR 201, has held as under:

> *Penalty Imposition of, on firm as well as its partner It is not permissible as unlike a company, partnership firm is not juristic entity and does not have existence independent of its partners Penalty levied on partners is recoverable from each partner individually, while penalty on partnership firm is also recoverable from partners - Hence, partners are penalized twice for same offence.*

Moreover, since the demand of duty is not sustainable, the penalty imposed on the appellant no. 1 is also not sustainable.

7. In view of above discussions and findings the appeals bearing nos. 428 & 429- ST/APPL-MRT/MRT/2017, both dated 03.07.2016, against the Order-in-Original No. 151-152/Jt. Commissioner/Hapur/2016-17 dated 31.03.2017 are allowed, and the impugned order is set aside, with consequential relief."

2.0 Aggrieved Revenue has filed this appeal, stating various grounds in the appeal without showing how the findings of facts arrived by the Commissioner (Appeals) on the basis of the records before him is perverse. Grounds stated in the appeal are reproduced below (Paragraph Numbering have been done by us for ease of reference):

"1. The Department demanded service tax on the whole amount booked/billed as per Balance sheet of B.N. Viz & others, Catering Bills resumed during search , Ledgers under the head Mansarover Paradise towards Banquet Rent , Misc. Income, Room Rent , Catering sale, Food sale, Bar sale, Wine sale, etc. The respondent was maintaining two separate sets of accounts, one in the name of M/s Mansarover Paradise and other in the name of M/s B.N. Viz & others. Only M/s B.N. Viz & Others was registered with the department for the purpose of making service tax payments to the Govt. exchequer.

2. Shri Ankur Goel Senior Manager of the respondent in his statement dated 11.02.2016 stated that there were total 44 rooms/suite comprising of 6 economy class, 10 business class, 8 super deluxe, 19 suite. He further stated that there were 4 conference Halls namely Mars , Venus, Crown & Jupiter and 2 Banquets Halls namely VIP & 1 Mehandi and Ghungroo. He further stated that there was one restaurant namely Ehsas, and one Bar namely Suroor. He further stated that health & club facility were complimentary for their room guest. He further stated that service tax calculation and payments thereof is made in accounts department which was being looked after by Shri Kamal Arora.

3. In his statement dated 11.02.2016 Shri Kamal Arora stated that Bills resumed from his office premises were prepared by him. He further stated that he prepared bills and suppressed the value it on the directions of the partner. He further stated that he prepared bills of tariff below 1000/-. He further stated he also suppressed the income from Banquet & conference Halls by generating bogus bills for amounts of Rs. 18539/-, Rs. 40000/- Rs. 35000/- & Rs. 20,000/- etc. He also produced some suppressed bills of banquet rent to the visiting officers. He further stated that original billing (for room) and actual amount collected by them from their customers was being maintained by M/s Mansarover Paradise in one account whereas in another account i.e. of Ms B.N. Viz & others was *being maintained for generating bogus/suppressed bills, so as to prepare statutory records for the purpose of payment of service tax.*

4. The respondent could not deny the group summary print out of Mansarover Paradise & B.N. Viz & others taken from the computer system with software of accounting i.e. Tally, which was duly signed by the accountant. Further, the respondent could not put forth any cogent reason as to why an accountant being simply an employee, maintained separate records at his own level. The accountant of the respondent had no vested interest in doing so, nor could the respondent place any grounds/evidence to this effect. The accountant in his statement dated 11.02.2016 had stated that he was working as per the instructions of the partner of the firm. It is pertinent to mention that the accountant had not retracted from his statement before or during adjudication of the case. Further he text of materials downloaded for the tally ERP-9 transpires that Indirect Income is the income from services which involved income from other than sales, hence Room rent, banquet rent were covered in it. It also transpires that Income from sales as shown in the accounts of sales included heads such as catering, food, bar, wine, etc. Accordingly, the department rightly and reasonably took the group summary of these two heads which served the purpose of detecting the evasion whereas the other accounts group summary was not warranted. Further, the respondent had ample time i.e.from 11.02.2016 to 16.3.17 (almost more than 365 days) to submit other evidences, if any, in their favour from cash book, bank book etc. but instead of placing any favourable evidence before the adjudicating authority they were putting forth the submissions which were general in nature. The group summary is a summary of particular accounts and the same can not be generated until & unless there is journal entry in tally and from that the entire group summary is automatically generated. The journal entries in the books of accounts had not been denied by the respondent. Hence, the submission of the respondent that *the group summary was not correct and was against the basic principles of accounting, does not appear tenable and convincing*

5. The demand of Service tax had been confirmed on the basis of the documents resumed during the search of the respondent's premises and the statements of the accountant etc hence, there appears no room to dispute the same.

Further, in the case of M/s Windson Chem Industries, referred to as [2012 (2) ECS (118) (Trib.)], the Tribunal had held that, " If any confessional statement has been tendered by the appellant assessee regarding clandestine removal of goods, further corroboration may not be necessary." Accordingly, the observation of the appellate authority that no corroborating evidence had been adduced by the department to substantiate the allegations made, does not appear to carry any weightage.

6. The "tally ERP 9 transpires that group summary shows the summary of particular accounts of a company/organization for a specified period. The group summary of different accounts, i.e. (i) Sales Accounts which comprised of food sales , bar sales, wine sales etc. (ii) Indirect Income comprising of Banquet Rent , Room rent etc. of Mansarover Paradise for FY 2013-14, 2014-15 & 15- 16 (upto Jan'2016) was taken from the system of the respondent and was duly signed by the accountant and Sr. Manager. Therefore the respondent's plea that from group summary itself it can not be concluded that two separate sets of books of accounts were being maintained falls down and creation of a company in the name of Mansrover Paradise & B.N. Viz & others and making journal entries therein of the taxable services provided from their premises, is itself a proof that they maintained two sets of accounts. The respondent could not produce any cogent reasons about the huge difference in gross value of the taxable service such as room rent, banquet rent, food sale etc as reflected in the two sets of accounts.

7. Further, Shri Chhabra was shown the unsigned bills resumed on the date of visit, which had been accepted by him. Similarly the print out of group summary of both the accounts of *both the organizations taken out from the respondent's system, was also placed before him and he had aceepted his liability and being convinced by the detection of tax evasion by the visiting officers, deposited 15 Lakh and sought further time to deposit the remaining amount*

8. Further, it was the responsibility of the respondent to prove as to why & how group summary of Mansover Paradise was not genuine, and until & unless they proved contrary to what the department had worked out from the documents resumed and retrieved from their systems, the same shall remain final, The provisions of Section 36A & 36B of the Central Excise Act, 1944 are equally applicable to service tax matters as provided under Section 83 of the Finance Act, 1994 wherein it has been clearly mentioned that the documents resumed and even computer print outs was a valid evidence under the law.

9. The respondent had misinterpreted the provisions of exemption treating that when there is no declared tariff, there would be no service tax. As per the provisions of Notification No. 31/2011- ST dated 25.04.201 1, service tax is exempted on room rent wherein declared room tariff was less than Rs,1000/- per day. Similarly Sr.No.18r of notification 25/2012-ST dated 20,06.2012 clarifies the definition of room tariff as under.

10. It can be explained as under: suppose a Hotel collects Rs. 2000/- from customer after giving discount of Rs. 200/-, then room tariff will be 2200/-. Therefore the onus is on the respondent to prove that the Bills issued were below Rs. 1000/- for one room/day for claiming the benefit of exemption, in which they failed. Therefore the respondent's plea as held by the Appellate authority, is not proper

11. For the sake of clarity, the relevant text of law, is being reproduced below:-

A. *Notification No 31/2011-ST dated 25.04.2011 ……*

B. *Notification No 25/2012-ST dated 20.06.2012 ……*

C. *Notification No 34/2011-ST dated 25.04.2011 ……*

D. Section 66B of the Finance Act, 1994 ……..

……

12. The respondent could not come forward with any cogent reason for maintaining 2 separate sets of documents for the services rendered from their premises, ie. one in the name of M/s Mansarover Paradise which was actual as stated by the accountant and thus the department took its figures for calculating service tax for the period 2013-14 to 2015-16 (upto Jan) and other in the name of M/s B.N. Viz & others, the accounts of which were maintained for payment of service tax and the same were stated as not real. The respondent did not provide the data for 2011-12 to 2012-13 and it could also not be retrieved during visit so the calculation of service tax was made on the basis of figures available in balance sheet of M/s B.N. Viz & others for the period 201 1-12 & 2012-13.

13. In view of the above, the allegations of the department for short payment of service tax by the respondent during the period 2010-11 to 2015-16 would prevail and the respondent's submissions made in this regard would not stand. Therefore it is a fact that the respondent short paid service tax amounting to Rs.15069480/- during the impugned period by contravening the previsions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service tax Rules, 1994.

14. Further, the respondent failed to provide the customer wise details of collection for the impugned period and the respective Bills. The Section 67 (2) of the Finance Act, 1994, in thus regard provided that in case service tax is not charged from the customer separately then only it should form part of gross amount and not otherwise. Further, from the statement of Sr. Manager Shri Ankur Goel stating that hard copy of Bills were not retained, it was apparent that the respondent have done so in order to evade service tax. As per the provisions of Rule 5 of the Service Tax Rules, 1994 (reproduced below) all the records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain. Thus the *respondent was bound by Rule 5 supra to keep records for the period 2010-1 1to 2015-16.*

"Rule 5. Records. ……

15. Further, the provisions of Rules 4A of the Service tax Rules 1994, inter-alia provides that invoice or any other document is mandatory to be issued within 14 days (upto 31.3.12) and within 30 days (from 1.4.12 onwards) from the date of completion of service or receipt of advance whichever is earlier

16. The respondent had thus not followed the provisions of the Service Tax Rules. In absence of Bills invoices or any other similar document, it is not ascertainable as whether the respondent had charged service tax in these documents or not and the onus is on the respondent to do so in order to claim the benefit of cum tax price, but they failed to do so. This way, the benefit of the provisions of Section 67(2) of the Act, for the purpose of working out liability of service tax still due will not be available to the respondent.

17. In this regard, the Hon'ble Supreme Court of India in the case of Mysore Metal industries v/s CC Bombay [1988 (36) ELT 369] had held that a person (respondent in this case) claiming exemption has to prove that they are eligible for exemption contained in the notification.

18. Further, in a judgment the Constitutional Bench or Hon'ble Supreme Court in the case of Commissioner of Central Excise, New Delhi v/s HARI CHAND SHRI GOPAL reported at [2010 (260) ELT -3(S.C.) held that:

……

19. It is thus observed that the respondent had contravened the following provisions of the Finance Act,1994 & Service tax Rules,1994 with intent to evade payment of service tax. (i). they maintained 2 sets of accounts as discussed hereinabove to escape service tax and to mislead the department. (ii) they suppressed the value of taxable services in ST-3 returns and contravened the provisions of Section 68 of the Finance Act, *1994 read with Rule 6 of Service tax Rules, Section 70 of the Finance Act 1994, read with Rule 7 of the Service Tax Rules 1994 and Section 66/66B (w.e.11.7.12) and 67 of the Finance Act, 1994.*

20. The respondent's plea in this regard that extended period is not invokable is not sustainable as they could not put forth any cogent reason for maintaining 2 sets of accounts, suppressing the value of taxable services and not depositing service tax into Govt. Account. For the sake of clarity the following provisions of the Finance Act, 1994, are being reproduced

73. Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded …….

21. From the above discussion it is evident the present case falls under clause (c), (d) & (e) of the said section, thus the extended period has been rightly been invoked and the respondents are also liable to penalty in terms of the provisions of Section 78 of the Act.

22. The appellate authority has thus erred in allowing the appeals filed by the respondents in view of various judgements in respect of clandestine removal of Excisable goods' whereas the ratio of the said judgments does not apply in the instant case where the appellants have maintained two separate sets of accounts with intent to evade the service tax liability

Accordingly, the Appellate authority has also erred by not taking into consideration the aforementioned facts of the case while allowing the appeal of the respondent."

3.0 We have heard Shri A.K. Choudhary learned Authorised Representative appearing for the appellant-revenue and Shri Dharmendra Srivastava learned Counsel appearing for the respondent.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 This appeal has been filed by the revenue against the order of Commissioner (Appeal) and by the impugned order appeals of four distinct persons have been disposed of. Single appeal has been filed stating respondents follows on ST-7:

1. M/s B N Viz and Others, Mansarovar Shopping Complex, Delhi Road, Moradabad
2. Shri Rishi Kumar Chabra, Partner M/s B N Viz and Others, Mansarovar Shopping Complex, Delhi Road, Moradabad.

No other appeal has been filed making any other person respondent despite the defect memo being issued to the appellant revenue. As per the Defect Order Sheet dated 714462018 dated 23.04.2019, following was observed:

"2. From the appeal memo filed by revenue, we note that the name of both the respondents stand indicated in the appeal memo as respondents and inasmuch as, revenue is not required to give any fee, we deem it proper that one appeal indicating the names of both respondents file by Revenue can be considered as proper. Registry can give two no. of appeals."

Registry as per directions of the bench allocated two numbers viz ST Appeal No 70285/2019 and ST Appeal No 70286/2019.

S T Appeal No 70286/2019 which was marked in the name of second respondent, i.e. Shri Rishi Kumar Chabra has been dismissed vide Final Order No 71627/2019 dated 04.09.2019.

Thus we are now concerned with only one appeal which is against M/s B N Viz & Others as respondent.

4.3 We note that the grounds stated in the appeal are exact reproduction of the paras from the order in original as indicated in table below:

Para No of OiO	Para No in Grounds	Para No of OiO	Para No in Grounds
18	1	34,35	Notifications reproduced
20,21	2	36	12
22	3	37	13

23	4	38	14,15,16
24	5	39	17
26,27,30	6	40	18
31	7	41,42	19
32	8	43,44	20
33	9	45	21
34	10		

Thus it appears that the appeal have been filed only by referring to the order in original and for the reason that the appellate authority has set aside the same. No specific reason has been stated as to why the findings recorded by the appellate authority are not tenable, except in para 22 of the grounds of appeal to effect that the case law referred by Commissioner (Appeal) were in relation to the clandestine clearances of goods and hence should not have been applied.

4.4 We find that the Commissioner (Appeals) has decided the matter before him by holding that there are no corroborative evidences available on record to establish the case made out against the Respondent on the basis of second set of data retrieved. In absence of any such averment, we do not find any merits in this appeal. It is incorrect to say that the judgment relied upon by Commissioner (Appeals) while deciding the appeal, were in respect of the goods and not in respect of services. It is the ratio decidendi, which Commissioner (Appeals) has followed, which is reproduced below:

> ***"Though the confessionals statement may be the starting point of investigations but in view of the other evidence available on record and in the absence of the other evidence indicating. clandestine removal, the same cannot be made the sole basis for deciding against the assessee. To the same effect is the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Dhingra Metal Works 2010-TIOL-693-HC-DEL-IT laying down that though an admission is extremely important piece of evidence, it cannot be said to be conclusive."***

4.3 Accordingly, we do not find any infirmity in the order of the Commissioner (Appeals) to this extent.

5.1 Appeal filed by the revenue is dismissed. Cross Objection also gets disposed of.

(Dictated and pronounced in open court)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp