IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70523/2018-EX[SM]

(Arising out of Order-in-Appeal No. 502/CE/Alld/2017 dated 19/12/2017 passed by Commissioner CGST & Central Excise Commissionerate (Appeals), Allahabad)

M/s I.T.I. Ltd. **Appellant**

Vs.

Commissioner CGST & Central Excise, Allahabad **Respondent**

Appearance:

Shri S.P. Ojha (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi, AC (AR) for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing	:	09/07/2018
Date of Decision	:	09/07/2018

FINAL ORDER NO **71371 / 2018**

Per: Archana Wadhwa

After hearing both the sides I find that the appellant were manufacturing excisable goods as well as doing some trading activities. As per the Revenue, the appellant availed Cenvat Credit on common services, which were being utilized by them in the manufacture of excisable goods as well as in providing trading activities. Accordingly, a view was entertained that the appellant has to reverse the specific amount of the value of traded goods, in terms of the provisions of Rule 6(3) of the Cenvat Credit Rules.

2. Accordingly, proceedings were initiated against them by way of issuance of a show cause notice dated 15.03.2016 raising demand of Rs.43,44,778/- for the period from 2010-11 to 2014-15. The said show cause notice stands culminated into an order passed by the Original Adjudicating Authority confirming the demand along with confirmation of interest and imposition of penalty. This order was upheld by Commissioner (Appeals) to the extent of confirmation of demand and interest to the tune of Rs.27,15,988/- on the ground that prior to 01.04.2011 trading activities cannot be considered to be exempted services. He also set aside the penalty imposed upon the appellant by observing that the appellant simplicitor did not reverse the amount in terms of Rule 6(3), which cannot be considered to be mala fide on their part.

The said order of Commissioner (Appeals) is impugned order before Tribunal.

3. Learned Advocate appearing for the appellant assails the impugned order on the point of limitation. He submits that there was lot of confusion and the earlier decisions of the Tribunal held that the trading activities cannot be considered to be services, much less exempted services. The law was amended w.e.f. 01.04.2011 and the disputed issue was bona fide issue of interpretation of the provisions of law, no mala fide can be attributed to them. He also submitted that in the

show cause notice the Revenue has not indicated any common service, utilized in the manufacture of dutiable as also exempted activities. In any case, submits the learned advocate that they are ready to reverse the proportion credit, if any, relatable to the exempted services, for the period falling within the limitation.

4. After hearing the Learned AR for the Revenue, I find that the learned Commissioner (Appeals) upheld the part demand but set aside the penalty imposed upon appellant and Revenue is not in appeal against that part of the impugned order. The circumstances for imposition of penalty as also for the invocation of extended period are identical inasmuch as both pre-suppose a mala fide mind with intention to evade payment of duty. It is well settled that if penalty has been set aside, thus leading to believing the bona fide of the appellant, the normal period of limitation would not be available to the Revenue. As such on this ground as also by taking into account the Tribunal's decisions in the case of Krishna Auto Sales vs. Commissioner of C. EX. S.T., Chandigarh reported at 2015 (40) S.T.R. 1121 (Tri.-Del.) and Commissioner of C. EX., Mangalore reported at 2011 (270) E.L.T. 305 (S.C.), I hold that the demand raised beyond the normal period of limitation is not justified, the same is set aside.

5. However, a part of a demand would fall within the limitation period and the learned advocate has given undertaking to reverse the proportion Cenvat Credit in respect of common services, so utilized by them. It stand held in the above referred judgments that if the credit is reversed it amounts as it no credit was availed, thus, satisfying the condition of Rule 6(1). In such a scenario, the demand under Rule 6(3) is not called for. For the purpose of quantification of the amount of credit required to be reversed by appellant I remand the matter to the Original Adjudicating Authority. Appeal is disposed of in above manner.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit