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

APPEAL No.E/70414/2018-EX[SM]

(Arising out of Order-in-Appeal No. 15/CEX/Appeal/Audit Lko/2018 dated 31/01/2018 passed by Commissioner of Central Excise & Service Tax (Audit), Lucknow)

M/s Himangi Packaging Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Request for Adjournment, for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 11/07/2018
Date of Decision : 11/07/2018

FINAL ORDER NO-**71452 / 2018**

Per: Archana Wadhwa

After rejecting the request for adjournment, I proceed to decide the appeal itself, inasmuch as the issue lies in a narrow compass, duly covered by the Hon'ble Supreme Court's decision. Accordingly, I have heard the learned A.R. and have gone through the impugned order.

2. It is seen that the disputed issue relates to availment of Cenvat credit of service tax paid on GTA services availed by the assessee for outward transportation of their final product

during the period 2013-14 and 2014-15. The said credit was being availed by the appellant on the ground that since the goods are being supplied at buyer's premises, the appellant remain the owner of the goods till the delivery of the same. The said availment of credit was in the light of various decisions of the Tribunal and as also some of the High Courts wherein it was held that outward transportation of the goods till the buyer's premises, where the sale is on FOR basis, is available to manufacturer-assessee.

3. However, it is seen that all the said decisions stand reversed by the Hon'ble Supreme Court in their latest judgment in the case of Commissioner of Central Excise and Service Tax Vs Ultra Tech Cement Ltd. The said decision stands passed on 01st February, 2018 wherein it stands held by the Hon'ble Apex Court that Cenvat credit on Goods Transport Agency Services availed for transportation of goods from place of removal till the buyer's premises is not available to the manufacturer. As such the issue stands decided against the appellant on merits.

4. It is seen that the appellant have also contested the demand on limitation by submitting that the show cause notice stands issued on 04.03.2016 for the period April, 2013 to March, 2015 and as such is beyond the period of limitation. The Lower Authorities have invoked the extended period of limitation by observing that the appellant was aware

of the fact that credit was not available to them as also on the ground that the factum of taking credit was never reflected in their ST-3 returns.

5. Admittedly, during the relevant period, all the decisions were in the favour of assessee laying down that credit of service tax paid on GTA services for transportation of the final product up to the buyer's premises, is permissible. Further, the credit was being availed by the appellant, by reflecting the same in their Cenvat account, which have subsequently audited and an objection was raised. The factum of reflection of credit in the statutory account is indicative of the bonafide intention. Otherwise also the declaration of law by various authorities holding the field during the relevant period, was in favour of the appellant and was reversed only by the subsequent order of the Hon'ble Supreme Court passed on 1st February, 2018. In such a scenario, it cannot be said that availment of credit by the appellant was with the malafide intention so as justifiablly invoked the longer period of limitation.

6. I also note that the revenue apart from making a bold observation that the assessee was aware of the fact of non-admissibility of credit, has not referred to any evidence on record to show that such credit was being availed with a malafide intention. There are no basis for the revenue to arrive at the above finding. It is well settled law that in the

absence of any positive evidence to show the intention of the assessee to evade duty by suppressing or misleading anything, the invocation of longer period cannot be held to be justifiable.

As such I am of the view that the demand having being raised beyond the limitation period is barred. However, small period may fall within limitation period for which the liberty is being given to the adjudicating authority to re-quantify the demand falling within the limitation period.

7. As the extended period has been held as non invokable, in the absence of any malafide, the penalty imposed on the appellant is also required to be set aside for the same reason. The same is accordingly set aside.

8. The appeal is disposed of in above terms.

(Dictated in Court)

(Archana Wadhwa)
Member (Judicial)

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