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

APPEAL No.E/70997/2018-ST[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/APPL-MRT/77/2018-19 dated 21/05/2018 passed by Commissioner of Central Excise & Service Tax (Appeals), Ghaziabad)

M/s Bindalpapers Mills Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise & S.T., Meerut-i	**Respondent**

Appearance:

Shri Aalok Arora, Advocate — for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 13/03/2019
Date of Decision : 13/03/2019

FINAL ORDER NO-**70593 / 2019**

Per: Archana Wadhwa

After hearing both the sides, I find that CENVAT credit of service tax to the tune of Rs.12,22,759/- stands denied to the appellant on the ground that various input services in respect of which the same has been availed were not covered by the definition of Input Service in terms of Rule 2 (l) of CENVAT Credit Rules, 2004.

2. Without going into the merits of the case, I note that the show cause notice stands issued on 13.10.2015 for the period from December, 2013 to July, 2014. While dealing

with the aspect of limitation, the Original Adjudicating authority has observed as under:-

> *"I find that at the relevant time the party were filing self-assessed ER-1 returns and have appended a declaration that the facts have been correctly submitted in such returns and that they have availed correct CENVAT credit. Further, the party has in their ER-1 returns only declared the amount of CENVAT credit availed by them and no details of the services on which CENVAT credit was availed, was ever intimated to the department. I also find that as per the provisions of sub-rule (5) of Rule 9 the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit. The party has deliberately and knowing fully well that such CENVAT credit was not availed to them, have availed such inadmissible CENVAT credit."*

3. As is seen from the above, appellant had admittedly availed the credit by reflecting the same in their CENVAT credit account and also have filed the ER-1 returns showing availment of credit. The revenue's contention that the details of services on which credit was availed were never intimated to the department and as such the same amounts to suppression cannot be appreciated, inasmuch as, there is no column or provision in ER-1 return to show the description of the input services. In the absence of any requirement to describe the services, non-adherence of the same cannot be held on account of guilty mind. Revenue has not advanced any valid reason for invocation of extended period.

4. Accordingly, I set aside the demand on the said issue itself and allow the appeal with consequential relief.

(Dictated in Court)

(Archana Wadhwa)
Member (Judicial)

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