IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : COURT NO.I

EXCISE APPEAL NO.70175 OF 2016-EX[DB]

(Arising out of Order-in-Appeal No.444-CE/APPL-LKO/LKO/2015 dated 16.11.2015 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Lucknow.)

M/s. Kisan Sahkari Chini Mills Ltd.
(Sampurananagar, Distt: Lakhimpur Kheri)

...APPELLANT(S)

VERSUS

Commr. of Central Excise & Service Tax, Lucknow

RESPONDENT (S)

(7-A……..Ashok Marg, Lucknow, Uttar Pradesh-226001)

APPEARANCE

Absent on Call for the Appellant (s)
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

ORDER NO.70753/2019

DATE OF HEARING : 08.04.2019
DATE OF DECISION : 08.04.2019

MRS. ARCHANA WADHWA :

Nobody appeared. Accordingly we have heard the learned A.R. appearing for the Revenue and have gone through the impugned order.

2. The appellant is engaged in the manufacture of cane sugar, molasses and EAD and was availing the benefit of Cenvat Credit of Service Tax paid on various input services.

3. During the period 2010-11 to 2012-13, the appellant availed the Service Tax credit in respect of services received by them related to repair of drain, building of guest house, construction of boundary wall, road, RCC without bolt etc. and have availed the Cenvat credit of Rs.1,88,405/-.

4. As an audit objection, Revenue entertained a view that such services fall under the category of construction services, which was specifically excluded from the definition of input services w.e.f. 01.04.2011. As such proceedings were initiated against them for recovery of the said credit, by way of show cause notice dated 05.06.2014.

5. The appellant contested the demand on various grounds by submitting that the services relate to repair and maintenance services, which fall under the category of management, maintenance and repair services, the Revenue cannot change the classification of the services at the recipient's end and as such the availment of credit was justified. The demand was also assailed on the point of limitation.

6. The original adjudicating authority did not find favour with the above contentions of the appellant and confirmed the demand along with imposition of penalty. On appeal Commissioner(Appeals) held that certain activities were Cenvatable for which the lower authorities were directed to grant relief, However, in respect of some services he held

the demand to be sustainable. The said order of Commissioner(Appeals) is impugned before us.

7. Without going to the merits of the case we find that the demand is admittedly barred by limitation. The credit was being availed by the assessee by reflecting the same in their statutory records and it was only during audit that the said discrepancy, if any, was detected. It is well settled law that once the statutory records are being properly maintained by an assessee, he cannot be held guilty of any suppression or mala fide. As such we find that the demand is liable to be set aside on the ground of limitation itself. We hold accordingly and set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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