CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70513 of 2017-Division Bench

(Arising out of Order-in-Original No.01/COMMR./CEX./GZB/2017-18 dated 19/04/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

Commissioner of Central Goods &

Service Tax, Ghaziabad .....Appellant

(CGO Complex-II, Kamla Nehru Nagar, Ghaziabad)

VERSUS

M/s Metenere Ltd. ....Respondent

(Vill-Bheel Akbarpur, G.T. Road, Dadri, Distt. Gautam Budh Nagar)

APPEARANCE:

Shri Sandeep Kumar Singh, Authorised Representative for the Appellant
Shri Rajesh Chhibber, Advocate for the Respondent

WITH

Excise Appeal No.70540 of 2017-Division Bench

(Arising out of Order-in-Original No.01/COMMR./CEX./GZB/2017-18 dated 19/04/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s Metenere Ltd. .....Appellant

(Vill; Bheel Akbarpur, GT Road, Dadri, Distt. Ghaziabbad)

VERSUS

Commissioner of Central Excise, Ghaziabad ....Respondent

(CGO Complex-II, Hapur Road, Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOS.- 71166-71167 / 2019

Date of Hearing : 19 June, 2019
Date of Decision : 19 June, 2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Rajesh Chhibber learned advocate appearing for the assessee and Shri Sandeep Kumar Singh learned A.R. for the Revenue, we find that the appellant is engaged in the manufacture of Lead and Lead Alloy Ingots falling under Chapter 78 of the Central Excise Tariff Act, 1985. The Head Office of the appellant is located at Delhi, for which they got themselves registered as ISD on 06/08/2013. Thereafter three invoices were issued by the head office on 07/08/2013 passing on credit of around Rs.2.40 lakhs to the appellant's unit at Dadri. The said credit was utilized by the appellant for payment of duty upto July, 2013.

2. The entire fact of receipt of Cenvat credit, availment of the same and utilization of the same for payment of duty till July, 2013 were reflected by the appellant in their statutory records including ER-1 returns.

3. The appellant's factory was visited by Central Excise officers on 05/08/2014, who made various checks and verifications. A view was entertained that the credit availed by the head office was not appropriate inasmuch as the same was availed on the basis of documents which were not eligible for Cenvat credit and the head office having wrongly availed the credit, should not have passed on the same to the appellant. An objection was further raised that the appellant had availed credit in August, 2013, utilized the same for payment of duty in July, 2013, which was not in accordance with law. The said objection

of the Revenue was accepted by the appellant and they reversed the debit entry in Cenvat account and paid the duty in cash.

4. In view of the above discrepancies, proceedings were initiated against the appellant by way of issuance of a show cause notice dated 30/03/2016 alleging that the availment of Cenvat credit by the head office was not proper and as such transfer of the same to the appellant's units located at Dadri was inappropriate. It was also alleged that the credit availed by the head office was in respect of various other units of the manufacturer located at different places and it was not appropriate for the head office to transfer the credit in respect of services utilized at other places to the appellant, without corresponding receipt of services.

5. During the course of adjudication, the appellant challenged the said proposal in the show cause notice on merits as also on limitation. As regards merits the appellant contended that they have availed Cenvat credit on the basis of three invoices issued by their head office which is registered as ISD. Revenue is not disputing the correctness of the said three invoices and if, according to Revenue, availment of the credit by the head office was not proper, proceedings have to be initiated against the head office by their jurisdictional Service Tax Authorities. It was also contended that the jurisdictional Service Tax officers of the head office have not raised any objection to the availment of the credit by the head office and as such the objection raised at recipient's end cannot be entertained. Similar arguments were advanced for the purpose of availment of credit in respect of the services utilized by the other units. As regards the limitation, it was contended that the entire facts were known to the Revenue in August, 2013 only, as the fact of availment of credit and its utilization were reflected by the appellant in the statutory records and returns filed with the Revenue. As such issuance of show cause notice on 30/03/2016 was hopelessly barred by

limitation. They also contended that in any case and in any view of the matter, their factory was visited by the officers on 05/08/2014 when the entire facts came to their notice and as such, the initiation of proceedings against them after a gap of around Nineteen months by way of issuance of a show cause notice dated 30/03/2016 are hit and barred by limitation.

6. The Adjudicating Authority did not find favour with the assessee's contention and confirmed the demand alongwith imposition of penalty.

7. It is seen that further demand of around Rs.36,28,933/- was also confirmed by the same order on the ground that the same has been availed in the Cenvat credit account as "till April, 2010 to June, 2013". As the appellant could not explain the availment of said credit, the Adjudicating Authority confirmed the same.

The said order of the Commissioner is impugned before us.

8. As regards the first issue, we find that the credit was availed by the assessee on the basis of three invoices issued by the head office which is registered as ISD. Revenue is not finding fault with the correctness of the said three invoices. Their only ground is that the credit availed by the head office is inappropriate. If that be so, we fully agree with the appellant that the proceedings were required to be initiated against the head office and not against the present appellant. Admittedly, the appellant would not be in a position to explain the correctness or otherwise of the credit availed by the head office, for which records are being maintained at the head office only. Further the head office, as a registered ISD, is required to file returns etc. to their jurisdictional Service Tax Authorities. No objection seems to have been raised by the jurisdictional Service Tax Authorities of the head office. It is well settled law that assessment made at the end of the service provider cannot be

re-opened at the end of the service recipient by resorting to objection relatable to the service provider. As such, we find no justification for denial of credit to the appellant.

9. As regards the denial of credit of Rs.36,28,933/- the appellant contended that all the documents were seized by the Department and still lying in their custody. As such they are not in a position to explain the availment of the said credit unless such documents are returned to them. However, the demand on the said count is also assailed on the point of limitation.

10. As regards limitation, we note that the appellant's factory was visited by the officers on 05/08/2014 whereas show cause notices have been issued on 30/03/2016. Apart from the fact that the entire facts were being reflected by the appellant in their statutory records from August, 2013 onwards, which fact would not justify the invocation of longer period, we also note that the show cause notice has been issued even after normal period from the date of visit of the officers. The Hon'ble Allahabad High Court in the case of Commissioner of Central Excise & Service Tax vs. Triveni Engineering & Industries Ltd. 2015 (317) E.L.T. 408 (Alld.) has observed that issuance of the show cause notice after a gap of twenty two months from the date of audit is barred by limitation. In the present case also, we note that the proceedings were initiated against the appellant after a gap of around Nineteen months from the date of visit of the officers. In such a scenario, applying the ratio of the Hon'ble Allahabad High Court, we hold entire demand is barred by limitation.

11. Consequently the impugned order is set aside and appeal is allowed with consequential relief to the appellant-assessee.

12. Revenue is also in appeal against the said order on the ground of dropping of penalty on the Managing Director. We note that though Revenue is contesting non imposition of penalty

on the Managing Director but the appeal stands filed by showing the manufacturer as respondents. In any case as the demand against the manufacturer stands set aside alongwith setting aside of penalty imposed upon them, Revenue's appeal seeking imposition of penalty on the Managing Director is not maintainable. The same is accordingly rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks