CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70984 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1946-17-18 dated 27/03/2018 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad)

M/s. Amber Enterprises India P. Ltd., ...Appellant
Plot No. C-3, UPSIDC Industrial Area,
Site-IV, Kasna Raod, Greater Noida,
Gautam Budh Nagar, U.P.

VERSUS

The Commissioner of Central Excise, ...Respondent

Commissionerate Gautam Budh Nagar,

3rd Floor, Wegmans Busniess Park, K.P.- III,

Greater Noida, Gautam Budh Nagar, U.P.

APPEARANCE:

Shri Sharad Chandra Tewari, Advocate for Appellant
Shri Pawan Kumar Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01 July, 2019
DATE OF DECISION : 01 July, 2019

FINAL ORDER NO.**71324 / 2019**

ARCHANA WADHWA

After hearing both the sides duly represented by learned advocate Shri Sharad Chandra Tewari appearing on behalf of the appellant and learned AR, Shri Pawan Kumar Singh appearing on behalf of the Revenue, we find that the appellants were engaged in the manufacture of sheet metal components. They were also doing job work for one of their principal manufacturers M/s Indo Simon Electric Private Ltd.

situated in the state of Uttarakhand in terms of Notification No.50 of 2003. The said principal manufacturer was availing the benefit of area based exemption notification.

2. The appellants, by considering the said job work as providing of service, were discharging service tax on the same and were filing ST-3 Returns. However, as they were following the job were procedure and inasmuch as they were receiving inputs from the principal manufacturer under the cover of challan and the goods manufactured by them were being sent to the principal manufacturer under the cover of the same challan, Revenue entertained a view that the appellant's activity amounted to manufacture. Further, the benefit of the job work was not extended to the appellant on the ground that principal manufacturer was exempted in terms of the area based exemption notification and was not paying any duty of excise.

3. Accordingly, proceedings were initiated against them by way of issuance of show cause notice dated 28 January, 2016 raising demand of duty of Rs.12,19,591/- (Rupees twelve lakh nineteen thousand five hundred and ninety one only) for the period July 2013 to March, 2015. Before the Original Adjudicating Authority the appellant explained that they had already discharged service tax on their said activity under the knowledge of Revenue and as such longer period could not be available to the Revenue. They also contested that in case demand of excise is being confirmed against them they were entitled to the benefit of cenvat credit of duty paid on the inputs which have reached their factory premises directly from the input manufacturer.

4. The Original Adjudicating Authority, in respect of the assessee's claim of cenvat credit held that the party is

entitled to credit of duty paid on inputs used in the manufacture of their final product. However, the Commissioner (Appeals) in his impugned order has observed that inasmuch as a period of more than 6(Six) Months have passed from the date of issuance of the invoices the appellant is not entitled to the credit.

5. On the said issue, we find that there was a finding in favour of the assessee by the Original Adjudicating Authority as regards admissibility of cenvat credit which finding was not challenged by the Revenue, even though the Assistant Commissioner did not extended the benefit and did not calculated the value of demand by neutralizing the same against the cenvat credit. In such a scenario it was not justifiable on the part of Commissioner (Appeals) to deny the cenvat credit to the assessee on the ground of invoices being more than 6(six) months old. Otherwise also, we note that the claim to credit is being made by the assessee only when the demand of duty of excise is sought to be confirmed against them. In such a scenario the provisions of Rule 4 of Cenvat Credit Rules laying down the maximum time limitation of 6(Six) Months for claiming the credit would not be applicable. In view of the forgoing we hold that the demand now being confirmed against the assessee is required to be neutralized against the cenvat credit available to them for which they will produce documentary evidence.

6. We also note that the major part of the demand is barred by limitation. Inasmuch as appellants were paying service tax on the same activity and were filing ST-3 Returns there was due knowledge on the part of the Revenue and no *mala fide* can be attributed to the appellant so as to invoke the longer period.

7. In view of the forgoing, we set aside the impugned order and remand the matter to Original Adjudicating Authority to re-quantify the duty falling within the normal period of limitation and after extending the benefit of cenvat credit of duty paid on the inputs, as also by taking into account the service tax paid by the appellant in respect of the same activities during the relevant normal period. The same would also be adjusted against the demand of excise.

8. Inasmuch as we have held absence of any mala fide on the part of the appellant, the penalty imposed upon them is set aside in *toto*.

9. Appeal is disposed of in above terms.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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