CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/612/2009

[Arising out of Order-in-Appeal No.38/2009 (M-IV) dt. 31.08.2009 passed by Commissioner of Central Excise (Appeals), Chennai]

Hanil Lear India Private Ltd. Appellant

Versus

Commissioner of Central Excise,
Chennai-IV Respondent

Appearance :

Ms.Swetha Giridhar, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 21.03.2018

FINAL ORDER No. 40915 / 2018

Per Bench

The appellants are manufactures of Automotive Interiors. On scrutiny of records, it was noticed that appellants had paid Engineering fees / Royalty / Technical Consultancy fees to M/s.Hanil-E-HWA-Korea. Appellants paid an amount of Rs.36,22,550/- as being towards service tax liability on reverse charge basis. It however appeared that the appellant had received the services only prior to 10.9.2004. As per Section 3(1) of the Service Tax Credit Rules, 2002, an output service provider shall be allowed to take credit of the service tax paid on such input services which fall in the same category of taxable services as that of output service, for which invoice/bill is issued on or after 16th day of August 2002. Department took the view that the credit taken by the appellant of Rs.36,02,550/- was erroneous. Hence the show cause notice dt. 05.03.2008 was issued to the appellant inter alia, proposing recovery of the said credit amount availed by the appellant along with interest thereon and imposition of penalty. In adjudication, the original authority confirmed the proposals. In appeal, Commissioner (Appeals) vide the impugned order dt. 31.08.2009 upheld the order of original authority. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of appellant, Ld. Counsel Ms.Swetha Giridhar makes oral and written submissions which can be broadly summarized as under :

i) Service tax is not liable to be paid for import of services until enactment of Section 66A of the Finance Act w.e.f. 18.4.2006. Hence credit of service tax wrongly paid is very much eligible to be availed by the appellant

ii) Since the service tax has been paid by mistake, the amount of tax wrongly paid is eligible to be availed as credit since it amounts to refund of tax. In this regard, appellants placed reliance on the ratio of the Tribunal decision in *Bajaj Allianz General Insurance Co. Ltd. Vs CCE Pune* - 2015 (37) STR 316 (Tri.-Mumbai). The availment of the amount/s was disclosed by them in the E.R.1 returns along with the details of credit taken and also accompanied by T.R.6 challan copies. However, SCN in this case was issued more than 2 years after taking credits. Hence proceedings were very much hit by limitation.

iii) Moreover, the very same payment made towards service tax liability amounting to Rs.36,02,550/- had been disputed by the department on the ground that service tax was paid by them net of TDS instead of paying the same inclusive of TDS. SCN No.72/2007 was issued to them on 24.4.2007. Hence the extended period of limitation also could not have been invoked by the department in the present case based on the same amount involved. On the other hand, SCN dt. 24.4.2007 was issued in respect of the same issue of Rs.12,81,631/- involving five TR.6 challans which was part of the total amount of Rs.36,02,550/-.

3. On the other hand, Ld. A.R Shri S. Govindarajan supports the impugned order. He contends that the SCN dt. 24.4.2007 was issued for a different period and in a different context and hence cannot be taken as a ground for limitation as has been done by the appellant.

4. Heard both sides and have gone through the facts.

5. Ld.Advocate has been at pains to emphasize that the availment of credits totally amounting to Rs.36,02,550/- has been kept informed to the department in their E.R.1 returns and also accompanying T.R.6 challan copies. The period involved in the notice is March 2005 & March 2006. However, we find that the SCN has been issued only on 5.3.2008. We are not able to find any ingredients which can justify the invocation of extended period of limitation in this case for which reason we hold that proceedings are *ab initio* hit by limitation. The impugned order cannot then sustain and will require to be set aside, which we hereby do. Appeal is allowed on limitation with consequential relief, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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