IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.ST/41930/2016

[Arising out of Order-in-Appeal No.94/2016 (STA-II) dated 30.06.2016 passed by the Commissioner of Service Tax (Appeals-II), Chennai]

IPF Online Ltd. Appellant

Versus

Commissioner of Service Tax,
Chennai-II Respondent

Appearance:

Ms. Sridevi, Advocate
For the Appellant

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

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 28.03.2017

FINAL ORDER No. 40542/2017

Issue in this appeal relates to availment of cenvat credit on common input services which were used for provision of both taxable service as well as exempt service. Appellants are publishers of books and periodicals, in addition, they lend space in their website for advertising. On being pointed out, appellant paid up the disputed credit amount of Rs.12,84,800/- for the period 2008-09 to 2010-11, before issue of SCN. However, they paid interest liability thereon on 1.11.2013 only after issue of the SCN. Appellants are not disputing the tax liability. They are aggrieved by the impugned order confirming interest and penal liability in the matter.

2. Today when the matter came up for hearing on behalf of appellant, Ms. Sridevi, Ld.Advocate submitted that they had sufficient balance in their cenvat credit account during entire relevant period equal to the disputed tax credit, which fact they had pointed out to the Commissioner (Appeals) and the fact of the same is reflected in para-3 of the impugned order. Ld.Advocate relied on the ratio of the case law of jurisdictional High Court in *CCE Madurai Vs Strategic Engineering (P) Ltd.* – 2014 (310) ELT 509 (Mad.). She also relies on Tribunal's decision in *Garden Silk Mills Ltd. Vs CCE, Cus.& ST, Surat-I* - 2016 (332) ELT 820 (Tri.-Ahmd.) which has followed the decision of Hon'ble Gujarat High Court in *Commissioner Vs Dynaflex Pvt. Ltd.* – 2012 (25) STR 277 (Guj.) as also decision of this Tribunal in Final Order No.42327/2016 dt. 25.11.2016 in *BHEL Vs CCE Trichy* which *inter alia* followed *Strategic Engineering* judgement of the Madras High Court (supra).

3. On the other hand, Ld. A.R supports the impugned order. He contends that penalty is also correctly imposable in the facts of the case.

4. Heard both sides. Following the ratio of the aforesaid judgements and decisions, as long as assessee had sufficient cenvat credit in their account till the time of reversal of the irregularity taken credit, it is settled law that interest is not

payable by them. This would apply to the present case also, however, subject to the fact of appellant having sufficient credit during the entire period being verified. Accordingly, the matter is being remanded for the limited purpose of causing verification of this aspect. In case, the claim of the appellant that they had sufficient cenvat credit during the impugned period is found correct, no interest liability will accrue.

4. Coming to the issue of penalty, Ld. A.R states that consequent to amendment made in Section 78 of the Finance Act, 1994 w.e.f. 14.05.2015, equal penalty is imposable. In this regard, I find that from the facts on record that this is not a case of wrong credit having been taken on account of fraud, or collusion or willful misstatement or suppression of facts. It is obvious that such credit has been taken erroneously but inadvertently. They are an online publishing company and a start up, hence they would have had initial confusion in following the law. On being pointed out about the error committed by them, appellants have paid the entire irregularly taken tax credit along with interest liability thereof, which shows their bonafides. In the circumstances, penal provisions will not be attracted and hence there shall be no penalty. Appeal is disposed in the above terms.

(Dictated and pronounced in open court)

28/03/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai

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Customs, Excise & Service Tax Appellate Tribunal