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

Appeal No.ST/41902/2017

[Arising out of Order-in-Appeal No.54/2017 dt.21.04.2017 passed by the Commissioner (Appeals) Central Excise & Service Tax, LTU, Chennai]

Indian Overseas Bank — Appellant

Versus

Commissioner of Service Tax, LTU, Chennai — Respondent

Appearance:

Ms.S.Sridevi, Advocate
For the Appellant

Shri Arul C.Durairaj, Superintendent (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)

Date of hearing / decision : 24.10.2017

FINAL ORDER No. 42457 /2017

The brief facts of the case are that the Appellant are holders of Centralised Registration Certificate bearing No.AABC11223JST002 and are engaged in providing Banking and other financial related services. They are availing CENVAT credit under the provisions of CENVAT Credit Rules, 2004 (here after CCR). During the course of Audit conducted by Officers of LTU, it was noticed that they have availed cenvat credit in respect of services such as Rent-a-cab, Tour Operator Services, Air

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Travel Agent Services, Restaurant Services, Accommodation Services, Insurance Services and Courier Agency Services during the period from May, 2012 to July, 2015. As it appeared, that the services on which cenvat credit had been availed do not fall within the scope of 'input service definition', the Appellant requires to reverse the impugned credit. Accordingly, Show Cause Notice dated 28.03.2016 was issued to the Appellant for an amount of Rs.3,48,053/-. After due process of law, the said demand was confirmed along with interest under Rule 14 of CCR, 2004 read with Section 75 of the Act, 1994 and penalties at 50% of the duty demand were imposed in terms of section 78 of the Act. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. At the time of hearing, the Ld.Counsel, Ms.S.Sreedevi submitted that the appellant is contesting only the penalty imposed. That the alleged irregularly availed credit was immediately reversed by the appellant on being pointed out by audit. That major part of the credit is admissible, but since the appellant was not able to maintain proper documents, some invoices were lost and for such reason the demand of recovery of credit is not contested by the appellant. That there was no intention to evade payment of tax and being a PSU Bank, no malafide intention can be imputed on the appellant. She pleaded that the penalty imposed under Section 78 may be set aside.

3. The Ld.AR Shri Arul C Durairaj reiterated the findings in the impugned order.

4. Heard both sides. It is brought out from records that the appellants had reversed the credit immediately even before issuance

Customs, Excise & Service Tax Appellate Tribunal of Show Cause Notice. Further, most of the credit relates to services like Tour Operator Service, Air Travel Agent Service, etc which may be eligible if documents are produced and on other conditions being satisfied. The appellant being a PSU, it is argued that no malafide intention can be attributed. Taking into consideration the totality of facts, I am of the considered opinion that the penalty imposed under section 78 is unwarranted, and requires to be set aside which I hereby do.

5. In the result, the impugned order is modified to the extent of setting aside the penalty imposed under section 78 of the Finance Act, 1994 without disturbing the disallowance of irregularly availed credit. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Dictated and pronounced in open court)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

vsr

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
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अपील अधिकारी / (CESTAT)
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