CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No.50136 of 2017 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-148-16-17 dated 17.10.2016 passed by the Commissioner (Appeals), Central Excise & Service Tax, Raipur (C.G.)]

M/s.Central Warehousing Corporation **Appellant**
Regional Office –Raipur,
Warehousing Complex, Rawabhata,
Post Office:Birgaon,
Raipur (C.G.).

VERSUS

Commissioner of Central Excise & Service Tax, **Respondent**
Central Excise Building, Tikrapara,
Dhamtari Road, Raipur (C.G.).

APPEARANCE:

Shri S.C. Kamra, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51263/2021

DATE OF HEARING/DECISION:08.04.2021

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether interest on differential amount of service tax due to revision of price of storage charges is payable under Section 75 of the Finance Act, 1994.

3. The appellant had provided the storage facility to M/s. Food Corporation of India (hereinafter referred to as "FCI") consequent upon revision of prices with retrospective effect. It is admitted fact that the appellant has discharged the service tax liability on the differential amount so collected and reflected in their ST-3 Returns filed for the period 2012-13 and 2013-2014. Subsequently, FCI under the contract of storage invoked the price escalation clause of the contract and consequently a higher price

was agreed to be paid to the appellant. Accordingly, the appellant issued supplementary invoices to FCI for recovering the differential price from them and paying the differential value to the appellant. These payments of differential amounts were made to the appellant during the relevant period. In respect of storage facility, there was, thus, a time-gap between the date of payment of service tax under the original invoice and the date of payment of differential service tax under the supplementary invoices.

4. Revenue issued show cause notice dated 21.04.2015 invoking the extended period of limitation demanding interest under Section 75 on the additional amount of service tax, which arose due to revision /price escalation for the period from the date of original invoice till the date of supplementary invoice for the period 1st July, 2012 to 28.02.2015.

5. The show cause notice was adjudicated on contest and the proposed demand for interest was confirmed amounting to Rs.4,47,107/-, following the ruling of the Apex Court in the case of **CCE, Pune Vs. SKF India Ltd. – 2009 (239) ELT 385 (SC).**

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to reject the appeal confirming the order of adjudication.

7. Ld. Counsel submits that there has been subsequent development as the judgement of Apex Court Division Bench was doubted and the matter was referred and re-considered by the Larger Bench of the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd. Vs. CCE, Raipur – 2019-TIOL-204-SC-CX-LB,** whereby judgement dated 8.5.2019, the Apex Court has held that interest is payable under similar facts and circumstances for the period being the date of original invoice to the date of supplementary invoice. Accordingly, ld. Counsel does not contest the demand on merits.

8. However, he states that there is no allegation of any suppression or mis-conduct or mis-representation, etc. on the part of the appellant and the show cause notice dated 16/21.04.2015 has been issued pursuant to audit by the Department. It is an admitted fact in the show cause notice that the appellant has included the differential value in the taxable value of the services and paid service tax and filed returns for the relevant period. It was observed that the assessee did not pay the interest for the period as aforementioned. The appellant took the stand that there is no error in paying the tax as per the original invoice based on the rate of service received by them and subsequently when the rate of service charges and storage charges was revised by the service receiver under the contract. Subsequently, they have raised supplementary invoices and deposited the service tax within due date and hence, there is no delay in payment of tax. However, the Department has issued the show cause notices relying on the ruling of the Apex Court in the case of **SKF India Ltd. (supra)**. Accordingly, ld. Counsel prays that limitation under the provisions of Service Tax Act during the relevant period was 18 months and accordingly, the demand for the period July, 2012 to March, 2013 is time barred, as the due date for filing the return is 10.09.2013 and thus, the limitation starts from this date and the period of 18 months ends on 10.03.2015. Accordingly, the demand for this period is time barred as the show cause notice is issued after 10.03.2015. Accordingly, he prays for consequential relief on the ground of limitation.

9. Ld. Authorised Representative relies on the impugned order.

10. Having considered the rival contentions, I find that there is no case of fraud, mis-representation or suppression of facts on the part of the appellant as they have disclosed the additional taxable turnover arising out of the issue of supplementary invoices and has also paid tax in time and also

disclosed such turnover in their books of accounts and returns filed with the Department. In this view of the matter, I hold that the demand for the period July, 2012 to March, 2013 is barred by limitation. The appellant shall be liable to pay the balance demand in view of the ruling of the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd. (supra).**

11. Ld. Counsel mentions that they shall pay the balance demand forthwith and file compliance report with the Adjudicating Authority. Thus, the appeal is allowed in part.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.