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

Excise Appeal No.52532 of 2018 (SM)

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-797-17-18 Dated 26.03.2018 passed by the Commissioner (Appeals), Customs, Central Goods & Service Tax and Central Excise, Indore (M.P.)]

M/s. Neo Corp International Ltd. **Appellant**
Plot No.62-63, Industrial Area,
Sector-1,
Pithampur, Distt. Dhar (M.P.).

VERSUS

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
Indore (M.P.).

APPEARANCE:

None for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

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

FINAL ORDER NO.51752/2021

DATE OF HEARING/DECISION:19.07.2021

ANIL CHOUDHARY:

This appeal is taken up for ex parte hearing as the appellant is not appearing in this matter for the last several dates. Accordingly, this Tribunal took up this matter for hearing on the previous dates 2.7.2021 with the assistance of the ld. Departmental Representative for the Department. After hearing in part, the hearing was adjourned for today, thus granting one more opportunity to the appellant with direction to send the notice to the appellant by email and speed post. As per report of the Registry, it is evident that the notices have been sent both by email and speed posit on 7.7.2021. Today also, the appellant is absent on call. This is the second round of litigation. Earlier this dispute had come up before this Tribunal in appeal by the assessee being Appeal No.E/51955 of 2016-EX (SM), wherein vide the Final Order No.54684/2016 –EX (SM) dated 01.11.2016, this

Tribunal on merits held against the appellant/assessee. However, on limitation, the matter was remanded for deciding the issue on limitation, after examining all the documentary evidences including ER-1 and after affording an opportunity of hearing. Pursuant to remand, the Joint Commissioner, after examining the reply and after granting the personal hearing, when Advocate of the appellant appeared and submitted the defence reply and also stated that they shall submit the additional reply within a period of weeks. In spite of opportunities granted on 13.08.2017 and 18.08.2017, no further reply was filed. Further, the Adjudicating Authority decided the issue against the assessee. In appeal filed by the appellant before the Commissioner (Appeals), the ground of limitation was decided against the assessee by observing as under:-

> " *In this regard, I find that the appellant has not produced copy of said ER-1 Returns evidencing their contention the facts such as (i) services were used for construction of building and civil structure for separate division of the appellant, which is a 100%% EOU and has separate registration (ii) name of services on which credit were availed and (iii) use of Galvanized sheet in construction etc. were shown in ER-1 returns. I also find from the impugned order that the Adjudicating Authority has recorded his discussion and findings in par 9.1 and 9.2 of the impugned order as under:-*
>
> > *This issue has been examined in the light of instructions/directions ordered under para 8 of the Hon'ble CESTAT, it is found that the demand confirmed vide order-in-original no.22/ADC/CEX/IND/2013-14 dated 3.2.2013 was detected during the examination of the records/returns/documents of the noticee at the time of conducting audit by the department.*
> >
> > *The ER-1 Returns submitted by the assessee does not show the particulars and nature of the services on which they have availed cenvat credit,*

whereas it shows only aggregate value of amount in respect of cenvat credit details like opening balance, taken/utilisation and closing balance. Details of nature of input credit/service and details of documents regarding service received/provider and eligibility of cenvat credit may not be ascertained on the basis of details furnished through the ER-1 Return, therefore, the question of limitation on the basis of ER-1 furnished by the noticee is not appeared relevant and lawful in the instant case.

In this regard, I find that the appellant has not countered any point mentioned in above findings of the Adjudicating Authority and has also not submitted any evidence contrary to the said findings. Therefore, I do not find any force in the submissions of the appellant in this regard. As such, I find that the extended period has correctly been invoked for issuance of impugned show cause notice. I also find that the credit was wrongly availed during 2009-2010 and show cause notice was issued on 2.1.2013 as such I find that the show cause notice is issued within five years from the date of credit after invoking extended period correctly. Therefore, I find that the show cause notice is not hit by limitation of time for issuance of show cause notice. Held accordingly. "

2. Being aggrieved, the appellant filed appeal before this Tribunal. As the appellant has not been appearing for the last several dates, in spite of repeated notices by this Tribunal, this appeal is dismissed for non-prosecution. Thus, the appeal is dismissed.

[Order dictated and pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.