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

Service Tax Appeal No.51216 of 2022 (SM)

(Arising out of Order-in-Appeal No.01(SM)/ST/JPR/2022 dated 07.01.2022/11.01.2022 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

M/s.Shree Ganesh Constructions, **Appellant**
6/700, U.I.T. Colony, Bhiwadi,
Alwar, Rajasthan.
301 019.

VERSUS

Commissioner of Central Goods & & Service Tax and Central Excise, **Respondent**
A-Block, Surya Nagar,
Alwar, Rajasthan-301 001.

APPEARANCE:

Shri G.G. Gupta, Advocate for the appellant
Shri Divey Sethi, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51001/2022

DATE OF HEARING/DECISION:12.10.2022

ANIL CHOUDHARY:

The appellant is registered with the Service Tax Department and is providing taxable services under the head "Commercial or Industrial Construction Services" and Civil Structures, Construction of Residential Complex under the head "Works Contract Services". Show cause notice dated 25.02.2016 was issued alleging that the appellant was the main contractor and they received the services of the sub-contractor – Nadia Enterprises, on which service tax short paid is Rs.64,521/-. Further, it was alleged that the appellant have received input services of supply of manpower from Nagendra Mishra and on the taxable value of Rs.29,27,600/- received during the year 2011-2012 and 2012-2013, service tax was payable of Rs.3,58,555/-. The show cause notice invoked the extended period of limitation. It is alleged that had the Audit not examined the records of the assessee, these facts would not have come to the knowledge and tax would have escaped from payment. Accordingly, show cause notice was issued for the service tax amount of Rs.4,23,076/- with proposal to appropriate Rs.64,521/-, which was already deposited by the appellant/assessee vide challan no.30162 dated 28.09.2013.

2. Further, admitted fact is that M/s.Nagendra Mishra vide supplementary Invoice no.3 dated 28.09.2013, had issued invoice for payment with respect to the supply of manpower services during the period as stated above, and also charged amount of service tax of Rs.3,58,855/- and have deposited the same with the exchequer, which is not in dispute. The appellant took cenvat credit of the same being input credit for the receipt of the manpower services utilized for rendering the taxable output services.

3. In reply to the show cause notice, the appellant informed that they have received the services from Nagendra Mishra on the basis of labour rate. Further, Nagendra Mishra paid the said tax amount with interest to the exchequer. So far the work done through their sub-contractor, M/s. Nadia Enterprises, they have deposited the differential service tax of Rs.64,521/-. The show cause notice was adjudicated vide order-in-original dated 30.09.2020 and proposed demand confirmed denying the benefit of cenvat credit and appropriation of Rs.64,520/- was allowed and further, interest was demanded of Rs.5759 and penalty was imposed under Section 78 of equal amount of Rs.4,23,076/-.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals). This is the second round of litigation. As regards the cenvat credit of Rs.3,58,555/-, ld. Commissioner (Appeals) in the impugned order observed that this amount has been deposited by the service provider on 11.10.2013, of which the appellant have taken the credit for adjustment of tax dues on 31.03.2013. Further, observed that as per Rule 3(4) of Cenvat Credit Rules, cenvat credit shall be utilized only to the extent such credit is available on the last date of the month or quarter, as the case may be for payment of duty or tax, relating to that month or quarter, as the case may be. Thus, held that cenvat credit availed was not admissible.

5. Ld. Counsel for the appellant urges that although Rule 3 (4) entitles an assessee to avail benefit of cenvat credit as per balance lying in the credit on the last date of the month or quarter relating to the tax period, as the case may be. However, in view of the implementation of the GST Regime, if the appellant is now required to deposit amount of input credit in cash, the said amount paid earlier through cenvat credit shall become refundable. Thus, this situation is revenue neutral. Accordingly, he prays for allowing the appeal in the interest of justice.

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

7. Having considered the rival contentions, I find that the court below is not in error in observing that the credit of the amount of Rs.3,58,555/- was not available on 31.03.2013. However, in view of the transitional provisions under CGST Act, I find that if the appellant is required to deposit the said amount again in cash, the amount of tax adjusted earlier through cenvat

credit will become refundable to them. Thus, the situation is definitely revenue neutral. Further, this amount was admittedly deposited by the service provider with interest. In view of the matter, I allow this appeal and set aside the demand of Rs.3,58,555/-. Further, in the facts and circumstances, penalty imposed under Section 78 is also set aside. Thus, the appeal is allowed with consequential benefits.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.