IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Appeal No. E/50149 & 50150/2016- EX [SM]

[Arising out of the common Order-In-Original No.BHO-EXCUS-002-APP-211-15-16 Dated 28.10.2015 passed by Com., Central Excise (Appeals), Central Excise Building, Tikrapara, Raipur-04.11.2015.]

Navdurga Ispat Pvt Ltd. **…Appellant**

Vs.

C.C.E. & S.T.-Raipur **…Respondent**

Appearance:
Sh. Abhash M ishra, Ld. Advocate for the appellant
Sh.R.K. Mishra, Ld. AR for the respondent

CORAM:
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing.25.11.2016
Date of decision.18.01.2017

Final Order No. 50375-50376/2017

Per Ashok K. Arya:

1. The appellant, M/s Navdurga Ispat Pvt Ltd. is in appeal against two orders of the Commissioner (Appeals), both dated 28/10/2015 whereunder the demand of Cenvat Credit of Service Tax alongwith interest has been confirmed and penalties of Rs. 2, 01,550/- and Rs. 1,11,855/- are imposed on the appellant. The issue in both the appeals is common. Therefore, both these appeals have been taken up for consideration and decision together.

2. Brief facts are that as per the Notification No. 30/2012-ST dated 20.06.2012, 25% of service tax is mandatorily required to be paid by the service provider and the remaining 75% is required to be paid by the service receiver. The appellant is service receiver. In these cases service provider should have paid 25% service tax whereas the service provider has paid 100% of service tax; and the service receiver, the appellant has taken cenvat credit of entire amount of said service tax paid by the service provider. In the result the appellant has taken excess CENVAT Credit to the extent of 75% of Service Tax paid by the service provider.

2.1 The said excess availment of CENVAT Credit is to the tune of Rs. 4,03,100/- and Rs. 2, 35,709/- respectively in these two appeals. These amounts of CENVAT Credit have been disallowed by the lower revenue authorities, confirming the recovery of the same along with the interest against the appellant. The penalties amounting to 50% of the confirmed demands have been imposed on the appellant.

3. The appellant has been represented by the Ld. Advocate Sh. Abhash Mishra, who cites in support of the appellant, the Tribunal's decision in case of *Prime Ispat Ltd. vs. C.C.E. & S.T. Raipur* Final Order No- 51902/2016 dated 26.05.2016.

4. The Revenue has been represented by the Ld. AR, Sh. R.K. Mishra, who in support cites the following case laws:

i. *Madras Petro-Chem. Ltd. Vs. Collector of Central Excise* 199(108) E.L.T. 611 (S.C).

ii. *Star India Pvt Ltd. Vs. Commissioner of Central Excise, Thane-I* 2015 (38) S.T.R. 884 (Tri.- Mumbai)

iii. *Commissioner of C. Ex., Meerut-I Vs. Parmarth Steel & Alloys (P) Ltd.* 2007 (209) E.L.T. 200(Tri.-Delhi.)

iv. *Tech Mahindra Ltd. Vs. Commissioner of C. Ex., Pune-III* 2015 (38) S.T.R. 1200 (Tri.- Mumbai)

5. After careful consideration of the facts and the submissions of both the sides and the case laws cited, I am of the considered view that the appellant was to deposit 75% of service tax as per the Notification No. 30/2012-ST dated 20.06.2012. There is no dispute that the appellant has reversed the 75% of CENVAT Credit which they had taken initially against the provisions of Notification No. 30/2012-ST dated 20.06.2012. However the appellant has not made the payment of the interest on the demand confirmed so far.

6. The matter now concerns with the imposition of penalty which is 50% of the demand confirmed against the appellant. The Ld. Advocate argues that the penalty imposed should be set aside. However the ld. AR for Revenue points out that the service provider, who paid 100% service tax is entitled to file the refund claim for the service tax paid in excess (which is 75% of the Service Tax); and thereby Revenue would have lost the said amount of Service Tax forever had the Audit of the department not unearthed the subject contravention(s) on the part of the appellant. When the assessee appellant has not paid the interest part of the demand confirmed by the lower revenue authorities, there is no merit in this appeal for setting aside the penalties imposed by the lower revenue authorities. The case laws cited by the appellant do not support the case of the appellant for dropping the penalties imposed on them. Both the appeals therefore are rejected as without merits; the impugned orders sustain.

[Pronounced in open Court on 18.01.2017]

(Ashok K. Arya)
Member (Technical)

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