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

Appeal No. ST/55534/2013-ST(SM)

[Arising out of Order-in-Appeal No. 223/BPL/2012 dated 07.11.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Bhopal].

C.C.E. Bhopal **....Applicants**

Vs.

M/s. Central Mine Planning & Design Institute Ltd. **....Respondent**

Appearance:

Shri R.K. Mishra, DR for the Appellants
Shri Vinayak Shukla, Advocate for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 02.02.2017

FINAL ORDER NO. 50662/2017-ST(SM)

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (A) Revenue has filed the present appeal.

2. After hearing both the sides duly represented by Shri R.K. Mishra, DR for the Appellant and Shri Vinayak Shukla, Advocate for the Respondent, I find that Commissioner (A) has extended the benefit of inadvertently excess deposits made by them by observing as under:

"On perusal of the above, it is observed that sub-rule (4A) apply in the case where any amount is paid in excess to government exchequer towards the service tax liability for a month or quarter. In the instant case, the service liability towards the particular bill in question had been clearly

ascertainable and the same had been discharged fully by their initial payment and the second deposit was made erroneously which has to be considered as not required towards service tax liability. Against the second deposit, no taxable event had occurred and no consideration had been received. Hence, the second deposit was not against any service tax liability. Moreover, the second payment made was not charged under any invoice or bill or claimed from the customer. Thus, the clause of unjustment is not attracted so as to entail the requirement of filing refund claim under section 11B of the Central Excise Act 1944. In view of this, the 2nd time payment by challan in the month of Sept. 2008 is nothing but deposit made which was adjusted in the month of October 2008 for discharge of their service tax liability. Further, the appellant had also intimated to the Assistant Commissioner, Central Excise, Division Satna vide latter dated 17.10.2008, the fat of remitting the amount twice once in the month of August, 2008 and again in September 2008, for the second time for the same amount, though payment was received only once form the service receiver and also requested Asstt. Commissioner for communicating the modalities for getting back the excess payment of tax. The appellant had again communicated to the concerned Range Waidhan vide their letter dated 05.11.2008 to the effect of remitting the amount twice-once in August 2008 as due and erroneously again in September 2008 for the second time and that they had recovered the amount of Rs.13,70,950/- paid for the 2nd time in the month of September 2008 vide challan no. 4 from the service tax paid in the current month vide challan no. 00477 dated 03.11.2008 (e-payment). Under the circumstances, the appellant have succeeded to plead their case that the demand is not sustainable."

3. On going through the above facts and circumstances given by the Commissioner (A), I find no reasons to take a different view.

4. Admittedly, the second time payment was only a mistake on the part of the assessee and the reversal of the same was correct arithmetical measure under intimation to the Revenue. I find no reasons to take a different view.

5. Accordingly Revenue's appeal is rejected.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu