IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Serviced Tax Appeal No.ST/55594/2013 [SM]

[Arising out of Order-in-Original No. COMMISSIONER/ RPR/ ST/ 82/ 2012 dated 25.10.2012 passed by the Commissioner of Central Excise, Raipur]

Monnet Ispat & Energy Ltd. …Appellant

Vs.

C.C.E. & S.T., Raipur … Respondent

Present for the Appellant : Mr.Hit Chawla, C.A.
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 13/06/2017

FINAL ORDER NO. 54123/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 25.10.2012 passed by the Commissioner of Central Excise, Raipur wherein, Service Tax demand of Rs.49,78,833/- alongwith interest was confirmed against the appellant. Besides, penalties under different provisions of the Finance Act were also imposed.

2. Brief facts of the case are that the appellant is engaged in the manufacture of various iron and steel products falling under Chapter 72 of the Central Excise Tariff Act, 1985. During the course of manufacture of ingots by utilizing iron

ore, iron ore fines generated, which were exported by the appellant to various countries. For the purpose of transportation of iron ore fines to the port of export, the appellant utilized the services of goods transport agency. During the disputed period i.e. 25.09.2006 to 31.03.2009, the Department proceeded against the appellant for confirmation of the service tax demand on GTA service on the ground that the appellant was liable to pay service tax under reverse charge mechanism as a recipient of such service. The show cause notice dated 18.10.2011 issued by the Department, culminated in the adjudication order.

3. The ld. Consultant appearing for the appellant submits that the show cause notice issued for the entire period in dispute were barred by limitation of time having been issued beyond the normal period of one year prescribed in Section 73 ibid. To substantiate such stand, the ld. Consultant states that the case of the appellant is revenue neutral inasmuch as, Service Tax on the GTA service was eligible for refund under Rule 5 of the Cenvat Credit Rules, 2004 and also for the refund benefit provided under the Notification No.41/2007 dated 06.10.2007. The ld. Consultant has relied on the decision of this Tribunal in the case of Commissioner of Central Excise, Chennai-II vs. Lucas TVS Ltd. – 2016 (43) S.T.R. 418 (Tri.-Chennai), S.B. Logistics vs. CCE, Cus. & S.T. Belgaum - 2016 (41) STR 545 (Tri. -Bangalore) and also the decision in the case of Reliance Industries Ltd. vs. C.C.E. & S.T., Mumbai – 2016 (44) S.T.R. 82 (Tri.- Mumbai).

4. On the other hand, ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. On going through the impugned order, I find that the adjudicating authority has not considered the submissions of the appellant that the situation is revenue neutral and thus, the extended period of limitation cannot be invoked for confirmation of the adjudicated demand. It is an admitted fact on record that service tax paid on the GTA service by the appellant under reverse charge mechanism was eligible for input service credit and subsequent refund in terms of Rule 5 of the Cenvat Credit Rules, 2004. Further, the refund benefit provided under exemption Notification No. 41/07 was also available, since the goods were exported by the appellant and the disputed service was utilized for exportation of the goods. Thus, the present case is entirely revenue neutral. Therefore, demand, if any, should be confined to the normal period provided under Section 73 ibid. Since the show cause proceedings were initiated beyond the normal period, I am of the considered view that the same is clearly barred by limitation of time. I find that this Tribunal in the case of Reliance Industries Ltd. (Supra) has held in the case of revenue neutral situation, extended period cannot be invoked. The relevant paragraph in the said decision is extracted herein below:-

> ***12.****We also note that the entire dispute being revenue neutral, there could have been no intention to evade payment of duty and consequently the extended period of limitation was per se not invokable. It is settled law laid down in the following amongst other judgments a series of judgment including that of the Apex Court that in a case where credit is available to an assessee itself it cannot be said that there is any intention to evade payment of duty, which is a pre-requisite for invoking the extending period of limitation. In the instant case also if any tax was payable it could have been available immediately to the Appellant, thereby rendering the entire dispute being revenue neutral. This being the case the invocation of extended period of limitation is clearly not justified :-*
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> *(a) Reliance Industries Ltd. v. CCE - 2009 (244) E.L.T. 254 (Tri.)*
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> *(b) CCE v. Indeos ABS Ltd. - 2010 (254) E.L.T. 628 (Guj.)*
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> *(c) Mafatlal Industries Ltd. v. CCE - 2009 (241) E.L.T. 153 (T); affirmed by the Apex Court by dismissing the Civil Appeal reported in 2010 (255) E.L.T. A77 (S.C.)*
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> *(d) Nirlon Ltd. v. CCE - 2015 (320) E.L.T. 22 (S.C.)*

6. In view of the foregoing discussion and analysis, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita