CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 52182 of 2018-SM

(Arising out of Order-in-Appeal No. 173(SM)CE/JPR/2018 dated 11.04.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods Service Tax, Jaipur).

M/s Ultratech Cement Limited **Appellant**
Village Mohanpura, Kotputli
Jaipur, Rajasthan

VERSUS

Commissioner of Central Goods and Service Tax, New Central Revenue Building **Respondent**
Statue Circle, C-Scheme
Jaipur-I.

APPEARANCE:

Shri Dhrub Tiwari, Advocate for the appellant
Shri K. Poddar, Authorised Representative for the respondent

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

FINAL ORDER NO. 50835/2019

DATE OF HEARING: 22.05.2019
DATE OF DECISION: 22.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the denial of input credit of service tax paid on transportation of goods by Railway, distributed through ISD of the assessee, is justified on the ground that the service provider was not registered till 22.01.2013, when they received the registration certificate and service tax code.

3. The appellant is engaged in the manufacture of cement falling under Chapter 25 of the first schedule to the Central Excise Tariff Act, 1985.

4. The appellant avails transportation services from West Central Railway division of Indian Railways (WCR) for transporting its finished goods, i.e. cement from its plant to the depots/ godowns/ warehouses of the appellant's company. The said arrangement of transportation was made by the head office of the appellant registered as an Input Service Distributor (in short ISD) under Rule 2(m) of the Credit Rules. Transportation of goods by rail service was exempted upto 30.09.2012 vide various exemption notifications, the last being Notification No. 43/2012-ST dated 02.07.2012. The exemption was not extended post 30.09.2012, thus, Railways started charging service tax on such services on the value of total freight (less abatement) with effect from 01.10.2012. In this regard, the Railway Board issued Circular dated 28.09.2012 on the subject "Levy of Service Tax on Transportation of goods by Rail", carrying instructions regarding the applicable rate of service tax leviable on freight, insurance of Railway Receipts and claim of cenvat credit/ refund of the service tax paid by the Indian Railways.

5. WCR applied for service tax registration and the service registration number was allotted to them on 03.01.2013. During this intervening period, WCR raised railway receipt (RR) on head office of the appellant, i.e. registered as ISD. The ISD paid service tax to WCR. At the time of raising the invoices on the ISD, WCR did not indicate the service tax registration number, instead mentioned

"Applied for". In these invoices, railway department charged service tax amount and the same was distributed by ISD to the service recipient unit i.e. the appellant. On basis of the invoices issued by ISD read with the statement of credit details of the input service provider, the appellant has availed credit of service tax paid on transportation of goods by rail.

6. In view of above, a show cause notice dated 03.05.2016 was issued to the appellant, alleging that cenvat credit has been wrongly availed by the appellant on strength of ineligible documents viz., statements issued by ISD and further credit was distributed by ISD on basis of documents issued by WCR without being registered with the service tax department. Therefore, the credit has been availed in violation of the provisions of Rule 9 of the Credit Rules.

7. In the impugned order-in-appeal, the learned Commissioner (appeals) have held as during the relevant period service provider was not registered, the input credit have been rightly denied. Being aggrieved, the appellant is before this Tribunal.

8. Learned Counsel urges that admittedly the service provider was registered in course of time in January, 2013. Further, the service provider was department of Government of India under Ministry of Railway and thus chances of any decalcation of the tax collected by the Railway is very remote. Further, Revenue have collected the tax and return was also filed for the period under dispute. He further urges that the adjudicating authority may enquire from the Commissioner whether western railway is registered as service

provider. Further, without any such exercise the input credit have been denied having civil consequences on the appellant. Learned Counsel urges that the appeal may be remanded to the adjudicating authority for ascertaining the compliance of Western Railway and accordingly, the input credit may be allowed.

9. Learned Authorised Representative for the Revenue relies on the impugned order and states that it was obligation of the appellant as receiver of the service to ensure that the provider of service is registered in the Department.

10. Considering the rival contentions, I deem it fit and proper by allowing this appeal by way of remand to the adjudicating authority with the direction that he shall ascertain the status of registration and compliance of Western Railway from the concerned Commissionerate where Western Railway is registered, i.e. Service Tax-I, Mumbai, Division-II, Range Group-X. If Western Railway is found to have filed return, in that case the input service credit cannot be denied. The appellant is also directed to assist the adjudicating authority and furnish whatever details they have obtained. Accordingly, the appeal is allowed by way of remand. So far the issue of limitation is concerned, the issue is left open.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant