CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO.-IV

Service Tax Appeal No. 51359 of 2016-[DB]

[Arising out of Order-in-Original No. 06/PC/ST/BPL-II/2016 dated 29.01.2016 passed by Pr. Commissioner of Customs Central Excise & Service Tax, Bhopal]

H E G Limited **..........Appellant**
Plot No. 61, 62, 67 and 68
Sector A, Industrial Area, Mandideep
Distt. Raisen (MP)

Versus

Commissioner of Customs Central Excise & Service, Bhopal **..........Respondent**
Commissioner of Customs Central Excise & Service Tax, 48
Administrative Area, Arera Hills,
Hoshangabad Road, Bhopal (MP)

Appearance
Shri B L Narsihman & Narender Singhvi, Advocates for the appellant
Shri Vivek Pandey, Authorized Representative for the respondent

CORAM: **Hon'ble Mr. Bijay Kumar, Member (Technical)**
Hon'ble Ms. Rachna Gutpa, Member (Judicial)

Date of Hearing/Decision: 02.07.2019

Final Order No: 50952 /2019

Per Bijay Kumar

1. The present appeal is filed against the Order-in-Original No. 06/PC/ST/BPL-II/2016 dated 29.01.2016 by which the ld. Adjudicating authority has confirmed the demand of Rs. 61,84,731/- along with interest and penalty under the provisions of Finance Act, 1994 (hereinafter referred to as 'Act'). Further, a penalty of equal 10 % was also imposed on the noticee in terms of Section 76 of the Act.

2. Brief facts of the case are that during the course of scrutiny of appellant's ST-3 returns for period from April, 2012 to June, 2012 & October, 2012 to March, 2012, the Department observed that the noticee has self adjusted the excess service tax payment made in the subsequent period, which was objected upon by the Department under the provisions of Service Tax Rule, 1994 (hereinafter referred to as 'Rules'). Accordingly, the demand was confirmed after due process of law and which is a subject matter of present appeal.
3. Ld. Advocate submits that the Show Cause Notice itself accepts the fact that there has been excess payment on account of liability towards the service tax for period March, 2012 which is also not disputed and denied by the Department. The same amount of excess payment of Rs. 61,84,731/- was subsequently adjusted as per the provisions of Rule 6 (4A) of the Service Tax Rule and the contention of Department that the intimation is required to be done is not at all prescribed in the said Rule. Therefore, it was contended that there is no irregularity that has been committed by the appellant. Further, it is pleaded that in fact the Commissioner while adjudicating has relied upon the provisions of Rule 6(4A) of 6(4B) to confirm the demand is not at all applicable in this case.
4. Ld. DR on behalf of the Department reiterated the findings contained in the impugned order.
5. After having considered the issue at hand, we find that there is no dispute regarding the excess payment of service tax made by the appellant. We have also perused the Rule 6 (4A) of Service Tax Rules, which is as under;

> "Rule 6 [(4A)] Notwithstanding anything contained in sub-rule (4), where as assessee has paid to the credit of

> Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be."

6. After the perusal of the Rule 6(4A) it is quite clear that there is no need for any intimation to be filed by the appellant. We find that this rule has been made to take care of the situation where some excess payment is made towards liability of service tax adjustment thereof is permitted in the subsequent return filed, by the registrants, which has rightly been followed in this case. Therefore, we find no infirmity or propriety has been committed by the appellant. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit, if any.

(Dictated and pronounced in open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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