CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax RoA No. 50505 of 2019 &
Service Tax Appeal No. 52203 of 2018

(Arising out of order in appeal No. 531(CRM) CE/JDR/2018 dated 04.06.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur).

M/s New Krishna Builders **Appellant**
24 UIT Shopping Centre
Hiran Magri, Sector-4, Udaipur
Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax, Excise & Customs **Respondent**
142-B, Sector-11, Hiran Magri
Udaipur (Rajasthan)

APPEARANCE:

Shri Arvind Birla & Shri Suhrid Bhatnagar, Advocates for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51003/2019

DATE OF HEARING/DECISION: 25.07.2019

ANIL CHOUDHARY:

Service Tax RoA No. 50505 of 2019

Heard the parties.

2. The appellant have filed the present application for restoration of appeal on the ground that the learned Counsel for the appellant could not appear on 06.05.2019 due to Lok Sabha Election in the

State of Rajasthan on the said date. The reasons stated found to be plausible. The RoA is allowed.

Service Tax Appeal No. 52203 of 2018

3. The issue in this appeal, the appellant who is engaged in construction of complex service, whether cenvat credit of Rs.1,86,660/- have been rightly denied to them and further whether late payment fee have been rightly levied for delayed filing of return for the half year ending September, 2012 and March, 2013.

4. Learned Counsel for the appellant have taken me to the copy of return, which is on record for the quarter ending September, 2012 and half year ending March, 2013, wherein they have reflected the amount of cenvat credit available to them including cess of Rs.1,86,659/-. I find that the assessing authority has rejected the said claim observing that the appellant did not produce any documentary evidence on which they have availed cenvat credit. Thus, the genuineness of cenvat document cannot be ascertained.

5. Having considered the rival contentions, I find that the said observations are without any basis. There is no averment regarding what particular documents were asked for, which the appellant failed to produce. A claim made in return cannot be rejected, unless found to be untrue. In this view of the matter, I hold that appellant is entitled to credit of Rs.1,86,659/-.

6. The next issue regarding the levy of late fee in filing of return. Learned Counsel for the appellant submitted that for the quarter

ending September, 2012 the time for filing of return was extended from 15 April to 30 April vide CBEC Circular No. 2/2013-ST and the return was admittedly filed on 30.04.2013. Similarly, return for half year ending October, 2012 to March, 2013, the time was extended from August, 2013 to September, 2013 by CBEC Circular No. 4/2013-ST and the return is stated to be filed on 31.08.2013, within time. Learned Counsel further draws my attention, regarding the other return, where late fee is concerned, pursuant to audit objection as is evident from the copy of audit ITR No. 496/13-14 dated 26.08.2014 they have already paid. In this view of the matter, the late fee is also set aside.

7. Thus, the appeal is allowed with consequential benefits, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant