IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.75268/18

Arising out of Order-in-Original No.15/Commr./CGST & CE/HWH/Adjn./2017-18 dated 26.10.2017 passed by Commr. of Central Excise (GST & CE), Howrah Commissionerate, Kolkata

M/s Utkarsh Tubes & Pipes Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise & CGST, Howrah

RESPONDENT (S)

APPEARANCE

Shri N. K. Chowdhury, Adv. for the Appellant (s)
Shri S. S. Chattopadhay, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING / PRONOUNCEMENT : 07.05.2018

ORDER NO - **FO/A/76043/2018**

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against Order-in-Original No.15/Commr./CGST & CE/HWH/Adjn./2017-18 dated 26.10.2017 passed by Commr. of Central Excise (GST & CE), Howrah Commissionerate, Kolkata.

2. Heard both sides and perused the appeal records.

3. The contention of the appellant is that they have paid service tax to the provider of "manpower supply services" and the provider has paid the service tax to the Revenue and the appellant has availed cenvat credit on the same. As service tax has already been paid by

the provider of "manpower supply services", the credit is being denied for violation of provisions of Section 68 (2) of the Finance Act, 1994. It is the case of the Department that the appellant should have paid the service tax to the extent 75% of the taxable service and 25% should have been paid by the service provider as per Notification 30/12-ST dated 26th June, 2012 as amended w.e.f.01.07.2012. In the present appeal, the service tax provider has paid 100% on the taxable services and has failed to follow the bifurcated of percentage of service tax payment liability to the service provider and service recipient as stipulated under Notification No.30/12-ST (supra).

4. The ld.A.R. for the Revenue relies on the impugned order.

5. After hearing both sides and on perusal of record, I find that under the scheme of the Act under Section 68 (1), it is provided that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66B in such manner and within such period as may be prescribed. Further, in sub-section (2) of Section 68, it is provided that notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified and all the provisions of this Chapter shall apply to such person as if he is the person liable to service in relation to such service. I find that the words "in respect of such taxable services" as may be notified, have been inserted in sub-section (2) of Section 68 of the Finance Act, 1994 w.e.f.01.07.2012. Accordingly, I hold that the appellants have taken cenvat credit in

accordance with law. I further find that the invoice is a prescribed document under Rule 9(1)(f) of Cenvat Credit Rules, 2004, on which credit can be taken. Accordingly, I set aside the impugned order and the appeal filed by the appellant is allowed.

(Pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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