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

S.T.Appeal No.75416/18

Arising out of Order-in-Appeal No.194/ST-I/KOL/2017 dated 18.08.17 passed by Commr. of Central Excise (Appeals), CGST & C.Ex., Kolkata

M/s Excel Infocom Pvt. Ltd.

...APPELLANT(S)

VERSUS

CGST & C. Ex., Kolkata North

RESPONDENT (S)

APPEARANCE

Shri Sunil Modi, FCT for the Appellant (s)
Shri D. Haldar, Asstt. Commr. (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING /PRONOUNCEMENT : 23.03. 2018

ORDER NO - **FO/A/75979/2018**

Per Shri P. K. Choudhary :

This appeal has been filed by the Appellant against the impugned Order-in-Appeal No.194/ST-I/KOL/2017 dated 18.08.17 passed by Commr. of Central Excise (Appeals), CGST & C.Ex., Kolkata.

2. Briefly stated the facts of the case are that the appellant is registered with the service tax authorities for providing maintenance or repair service. A show cause notice dated 12.10.2012 was issued proposing demand of service tax of Rs.9,93,645/- and disallowance of cenvat credit of Rs.11,44,884/- for the period from 2007-08 to 2011-12. The adjudicating authority dropped the proceedings initiated under the SCN. Revenue filed appeal before the Commissioner (Appeals). By

the impugned order, the Commissioner (Appeals) disallowed the cenvat credit and also confirmed the demand of service tax along with interest and imposed penalty. Hence, the appellant filed this appeal.

3. Heard both sides and perused the appeal records.

4. It appears from the show-cause notice that on scrutiny of the records, it was found that there were certain irregularities on availment of cenvat credit. The appellant contended that they had paid the interest and the penalty and therefore, as per section 73(4A) of the Finance Act, 1994 there is no requirement of issuance of Show Cause Notice. On perusal of the adjudication order, we find that the adjudicating authority had examined the payment of tax at length. It has also examined the ST-3 returns of the disputed period. There is a dispute on availment and utilisation of cenvat credit on the basis of the closing balance of cenvat credit in the year 2010-11 and the subsequent period. The adjudicating authority had given the detailed figures of the said period in the adjudication order and observed that the appellant has paid the service tax along with interest and the penalty of 25% of service tax payable thereon and concluded that the benefit of section 73(4A) of the Finance Act can be extended. I find that the appellant intimated about such payment and prayed for waiver of show cause notice by letter dated 12.09.2012 to the investigating team. After considering the facts and the relevant law at length, the adjudicating authority dropped the proceedings.

5. On the other hand, the Commissioner (Appeals) by the impugned order observed that the appellants were not entitled to receive the benefit of small scale exemption without refuting the figures as mentioned in the adjudication order. It appears that the Commissioner (Appeals) passed the order without examining the records at length and therefore, such an order cannot sustain in the eye of law. Apparently, the adjudicating authority had given the detailed finding with examination of records and documents which has not been refuted by the department and such order is to be restored.

6. In view of the above discussion, the impugned order passed by the Commissioner (Appeals) is set aside. The appeal filed by the appellant is allowed.

(Operative part of the Order was pronounced in Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

mm