IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/75445/2018

(Arising out of Order-in-Appeal No.269/HWH/CE/2017-18 dated 18.11.2017 passed by the Commissioner of CGST & Central Excise, (Appeals), Kolkata-II)

M/s. Mangal Steel Enterprises Ltd.
Applicant (s)/Appellant (s)

Vs.

Commissioner of CGST & C.Ex, Howrah

Respondent (s)

Appearance:

Shri S.P.Siddhanta, Consultant for the Appellant (s)
Shri H.S.Abedin, AC(AR) for the Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision: 10.05.2018

ORDER NO.FO/76563/2018

Per Shri P.K.Choudhary

1. The dispute in this case lies in a narrow campus i.e. whether cenvat credit is available to the assessee on account of Service Tax paid by them as consignor/consignee of GTA Service against transportation cost of trading activity in which the assessee are engaged apart from their manufacturing activities.

2. Ld. Counsel appearing on behalf of the appellant assessee submits that the entire proceedings is barred by limitation as the show cause notice was issued after a lapse of more than 2 years. It is the case of the assessee that in terms of Notification No.28/2012-CE(NT) dated 20.06.2012 substituted w.e.f. 01.07.2012, exempted service means service on which no service tax is leviable under Section 66B of the Fi0nance Act. Trading activities has been

brought under the purview of exempted service w.e.f. 01.07.2012. Whereas the present show cause notice is for the period of 2005-2006 and 2006-2007. During which period there was no such provision. It is the submission of the ld. Counsel that they had submitted their ER-I Returns regularly and were subject to scrutiny by the Jurisdictional Central Excise Officers. Hence, there is no occasion for any suppression of facts and the entire demand as per the show cause notice covering the period 2005-2006 and 2006-2007 is barred by limitation of time by one year. Further extended period of five years is not applicable in the facts and circumstances of the case.

3. Ld. DR reiterates the orders of the lower authorities.

4. Heard both sides and perused the appeal records.

5. I find that in terms of Notification No.28/2012 CE(NT) dated 20.06.2012 (substituted w.e.f. 01.07.2012) exempted service means service on which no service tax is leviable under Section 66B of the Finance Act (Rule 2(e)(2) of CCR'04). Hence trading activities have been brought under the purview of exempted service with effect from 01.07.2012 as per above amendment. The present case relates to the period of 2005-2006 and 2006-2007. During the said period there was no such provision regarding trading activities. Hence, the question of payment of cenvat credit availed by the appellant on GTA for trading activities during the said period does not arise.

6. In view of the above discussions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Operative portion of the order have already been pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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