IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,

EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.76119 of 2014

(Arising out of Order-in-Original No.01/ST/ADJ/Commr./DIB/14-15 dated 23.05.2014 passed by Commr. of Central Excise & Service Tax, Dibrugarh)

M/s North Eastern Cables & Conductors Pvt. Ltd.

A.T.Road, P.O. & Dist.-Jorhat, Assam

Applicant

VERSUS

CCEx. & S.Tax, Dibrugarh

Milan Nagar, Lane "F", P.O. C.R.Building, Dibrugarh-786003

Respondent

Appearance:

Shri Jitin Singhal & Shri Rupesh Kumar, both Advocates for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

FINAL ORDER NO…76932/2019

DATE OF HEARING : 05.08.2019

DATE OF PRONOUNCEMENT/DECISION : 04 December 2019

PER P.K.CHOUDHARY :

The present appeal has been filed by the assessee, M/s. North Eastern Cables & Conductors (P) Ltd. against demand of service tax of Rs. 1,30,84,835/- with interest of Rs. 1,19,16,571/- and penalty equivalent to service tax amount confirmed vide the Order-in-Original dated 23.05.2014 passed by the Ld. Commissioner of Central Excise & Service Tax, Dibrugarh, for the period October 2009 to March 2011.

2. Briefly stated, the facts of the case are that the appellant is engaged in providing taxable services under the category of Erection, Commissioning or Installation Services and is registered with the Service Tax Department for payment of service tax. In the course of audit, it was found that the appellant, apart from rendering the aforesaid taxable services to Electricity Board, has also supplied materials like RCC Poles, conductors, angles, etc under separate contract for which payments were made separately by the Electricity Board, although the said goods have admittedly been used in the installation services rendered by the appellant. Show Case Notice dated 04.11.2013 (SCN) was issued by invoking extended period of limitation for irregular availment of CENVAT credit of central excise duty paid on said materials which were not legally eligible under the provisions of CENVAT Credit Rules, 2004. In the course of said audit, the appellant reversed the credit of unutilised portion i.e. Rs. 8,82,52,170/- before utilisation for payment of output service tax liability on which interest of Rs. 1,19,16,571/- has been demanded. After following the due process of law, the Ld. Commissioner adjudicated the SCN and confirmed the demand along with interest and also imposed penalty with the observation that the appellant intentionally availed wrong credit with intent to evade payment of service tax.

3. Shri Jitin Singhal & Shri Rupesh Kumar, Advocates, appeared for the appellant and Sri S. Mukhopadhyay, Ld. Departmental Representative (DR) appeared for the Revenue.

4. The Ld. Advocate vehemently argued that there was no intention to avail irregular CENVAT credit and that as soon as it was pointed out to them,that the credit is not available, they reversed the credit of the balance amount remaining unpaid. It is his submission that the definition of exempted service has been amended only in March 2011 vide Notf. no. 3/2011-CE (NT) dated 01.03.2011 whereby the trading activities have also been included therein for the purpose of reversal of

credit in Rule 2 (e) of the Cenvat Credit Rules, 2004. He submitted that the assessee is not contesting its case on merits but solely on limitation inasmuch as the entire details were duly submitted in the service tax returns filed with the Department which not only the Ld. Commissioner failed to consider but also did not deal with in the adjudication order. He relied on various decisions of the Tribunal wherein it has been held that when details of credit have duly been disclosed, there cannot be any case of suppression and longer period of limitation is not invokable.

He also submitted that since balance credit was already reversed without contesting the matter, it could not be said that the credit amount was wrongly utilised and therefore, the question of charging of interest did not arise. He relied on the various decisions of the Hon'ble High Courts as follows : -

(i) CCE & ST, LTU Balngalore vs. Bill Forge Pvt Ltd [2012 (279) ELT 209 (Kar)], (ii) CCE Bangalore vs. Pearl Insulation Ltd [2014 (281) ELT 192 (Kar)], (iii) CCE Madurai vs. Strategic Engineering (P) Ltd. [2014 (310) ELT 509 (Mad)], (iv) CCE Rohtak vs. Grasim Bhiwani Textile Ltd [2018 (362) ELT 424 (P&H)]. On same counts, he also contested the imposition of penalty.

5. On the contrary, the Ld. DR appearing for the Revenue submitted that the appellant is legally not entitled to credit and therefore the credit amount utilised by them for payment of service tax liability is liable to be recovered. He also submitted that the appellant is also liable to pay interest by placing reliance on the decision of Cipla Ltd vs. CCE [2019 – TIOL – HC – MUM – CX] and CCE vs. Vandana Vidyut Ltd [2016 (331) ELT 231 (Chhattisgarh)]. He prayed that the appeal be rejected being devoid of any merits.

6. Heard both sides and perused the appeal records.

7. We find that in the present case, since the credit amount is legally not eligible, the appellant is not contesting the demand on

merits but only on limitation. The appellant has submitted that credit has been availed wrongly without any intent to evade payment of service tax. We find that in the course of adjudication, the appellant specifically submitted the plea that they disclosed details of availment of credit in the ST-3 returns and that there is no evidence to the contrary to prove that credit has been willfully availed to defraud the Revenue. In the instant case, we observe that the SCN has not shown any positive evidence to prove wilful fraud or suppression to justify invocation of extended period of limitation.

8. We take note of the decision of the Tribunal in the case of Ultra Tech Cement Ltd. v. CCE, Jaipur-II [2014 (48) taxmann.com 99 (New Delhi-CESTAT), wherein it has been held that:

> *"2. Without going into the merits of the case, I find that the Revenue has invoked the longer period of limitation by simplicitor observing that the appellant has not disclosed the nature of the service in respect of which credit was availed. Commissioner (Appeals) has observed that the returns filed by the appellant only shows the total amount of credit by which it cannot be inferred that credit of certain inadmissible input services was availed.*
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> *3. However, I find no justification in the above stand of the lower authorities. Admittedly, the credit was duly reflected in the returns, which were filed with the Revenue. In the absence of any column in returns requiring the nature of the input or input services, the non-disclosure of the same cannot attribute any mala fide to the assessee. The Hon'ble Gujarat High Court in the case of Prolite Engineering Co. v. Union of India 1990 taxmann.com 680 has observed that non-disclosure of information, which is not required to be disclosed or recorded by statutory provisions or prescribed proforma does not amount to suppression or concealment. By applying the ratio of the above*

decision, I hold the demand to be barred by limitation. Accordingly, assessee's appeals are allowed.”

9. In view of the above discussions, we are of the considered view that the appellant’s case succeeds on limitation. Thus, the impugned demand is set aside and the appeal is allowed with consequential relief as per law.

(Pronounced in the open court on 04.12.2019)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Bijay Kumar)
Member (Technical)

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