

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76549 of 2018

(Arising out of Order-in-Appeal No.10/S.Tax-I/KOL/2018 dated 11.01.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. ITC Sonar (A Unit of ITC Limited)

(1, JBS Haldane Avenue, Gobinda Khartik Road, Kolkata-700046.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Agnibesh Sengupta, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75569/2022

DATE OF HEARING : 6 September 2022

DATE OF DECISION : 17 November 2022

P.K.CHOUDHARY :

The issue in this Appeal is whether the CENVAT Credit of Rs.29,481/- has been rightly disallowed under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 and whether the penalty imposed under Rule 15 of the CENVAT Credit Rules, 2004 has been rightly imposed.

2. The facts of the case in brief are that the Appellant, M/s. ITC Sonar, a unit of M/s.ITC Limited, a company incorporated under the Companies Act, 2013, a service provider under the categories of accommodation in Hotels, Inn, Guest House, Club or Campsite etc. Service, Restaurant Service, Convention Service, Outdoor Catering Service etc. Prior to the introduction of the 3rd Proviso in Rule 4(1) of CENVAT Credit Rules, 2004w.e.f. 01.09.2014, an assessee was entitled

to take CENVAT Credit in time after receipt of the relevant documents along with the goods specified therein. With effect from 01.09.2014, by introducing the 3rd Proviso in Rule 4(1) of CENVAT Credit Rules, 2004, it was provided as follows:-

"Provided also that the manufacturer or the provider of output services shall not take CENVAT Credit after six months of the date of issue of any of the documents specified in Sub-Rule (1) of Rule 9."

3. By a letter dated December 15, 2015, Superintendent of Service Tax, Range-I, Chowringhee-II Division, Service Tax-I, Kolkata informed the Appellant that it had been noticed by Central Excise Revenue Audit(CERA) during verification of the records/documents of the Appellant pertaining to the period 2014-15 that on several occasions the Appellant had taken CENVAT Credit on the basis of invoices of input services after six months of the date of the invoices and it was alleged that this had resulted in irregular availment of CENVAT Credit. The Appellant submitted its reply by a letter dated 05.02.2016 and submitted, *inter alia*, that the proviso to Sub-Rule (7) of Rule 4 of CENVAT Credit Rules, 2004 provides that the manufacturer or provider of output service shall not take CENVAT Credit after six months of the date of issue of any of the documents specified in Sub-Rule (1) of Rule 9, which was introduced w.e.f. 01.09.2004. It is the case of the Appellant that the aforesaid proviso is prospective in the operation and did not affect the documents in dispute issued prior to 01.09.2014. In the instant case credit had been taken on the basis invoices issued prior to September 1, 2014. Moreover, such credit had been taken within a period of six months from the relevant date i.e. 01.09.2014. The Appellant informed the Superintendent of Service Tax that the amount of CENVAT Credit taken in the present case to the tune of Rs.29,481/- had been paid by them on 05.02.2016. However, a Show Cause Notice dated 23.05.2016 was issued alleging that the Appellant had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 and Rule 3 and Rule 4(1) of the CENVAT Credit Rules, 2004, inasmuch as the Appellant had taken

irregular CENVAT Credit to the tune of Rs.29,481/- in the months of September 2014, October 2014 and February 2015 on the basis of several Invoices/Bills of input services after six months of the date of the invoices. It was further alleged that the Appellant had availed irregular CENVAT Credit with intent to evade payment of Service Tax. The Show Cause Notice was adjudicated on contest and the CENVAT Credit in question was disallowed. Further, interest was demanded and penalty of equal amount was imposed under Rule 15 of the CENVAT Credit Rules, 2004 read with section 78 of the Finance Act, 1994. Being aggrieved, the Appellant filed Appeal before the Ld.Commissioner(Appeals), who was pleased to reject the Appeal. Being aggrieved, the Appellant is in Appeal before this Tribunal.

4. Heard both sides and perused the Appeal records.

5. Considering the facts and circumstances, the only issue to be decided in this Appeal is whether the 3rd Proviso of Rule 4(1) of CENVAT Credit Rules, 2004 as introduced w.e.f. 01.09.2014, has got retrospective effect. I find that the said proviso was introduced w.e.f. 01.09.2014 and there is no stipulation in the amending Notification that the same shall apply retrospectively. Rules of interpretation provide that whenever any statute is newly added, the same has got only prospective effect unless it is specifically provided in the amending statute or the amendment is by way of substitution of an existing provision mainly by way of clarification or removal of defects. Accordingly, I hold that the said proviso to Rule 4(1) of CENVAT Credit Rules, 2004 has got only prospective effect. I find that the Tribunal in the case of Voss Exotech Automotive Pvt.Ltd. v. Commissioner of C.Ex., Pune-I [2018 (363) E.L.T. 1141 (Tri.-Mumbai)] has observed that Notification No.21/2014-CE(NT) dated 11.07.2014 should be applicable to those cases, wherein the invoices were issued on or after 11.07.2014 for the reason that Notification was not applicable to the invoices issued prior to the date of Notification. Therefore, at the time of issuance of invoices, no time limit was prescribed and limitation of six months cannot be made applicable. As such I find that the issue stands decided

in favour of the assessee by the above-referred decision of the Tribunal.

In view of the above discussions, the impugned orders are set aside and the Appeal, filed by the Appellant, is allowed with consequential relief, as per law.

(Order pronounced in the open court on 17 November 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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