IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76896 of 2018

Arising out of Order-in-Appeal No.41/S.Tax-II/Kol/2018 Dated 12.01.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.

M/s. C. E. Testing Pvt. Ltd.
(124A, NSC Bose Road,
Shreeparna Apartment, Kolkata-700092)

Appellant (s)

VERSUS

Commr. of CGST & Central Excise, Kolkata South Commissionerate
(180, Rajdanga Main Road, Kolkata, West Bengal)

Respondent (s)

<u>APPERANCE :</u>
Mr. Debayan Dutta, Advocate for the Appellant
Mr. A. Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO…75116/2023

<u>Date of Hearing : 24 February 2023</u>
<u>Date of Decision : 24 February 2023</u>

<u>PER R. MURALIDHAR</u>

When the Appeal came up for hearing, the Advocate appearing on behalf of the Appellant submits that they are providing service of Map Making to the service receiver at Jammu and Kashmir. They are also providing some services to other clients within India. They have taken the Cenvat Credit commonly available for services rendered to clients at Jammu and Kashmir as well as for the services rendered in other part of India. The Department issued Show Cause Notice on 21/10/2014 by invoking the extended clause on the ground that the services provided for the clients at Jammu and Kashmir would be exempted services. Accordingly, the demand of Rs.2,84,450/- for the service provided to SEZ and Rs.4,16,264 for services rendered for Jammu & Kashmir clients was issued. After due process, the Adjudicating Authority dropped the demand of Rs.2,84,450/- in respect of service provided to SEZ. He confirmed the demand of Rs.4,16,264/- on account of services provided to their clients in Jammu and Kashmir.

On Appeal, the Commissioner (Appeals) dismissed the Appellant's Appeal. Hence, they are before this Tribunal.

2. The Ld. Advocate relies on the case law Ramboll Imisoft Pvt. Ltd. Vs. Commr. of Cus., C. Ex. & S.T., Hyderabad-II 2017 (47) S.T.R. 61 (Tri.-Hyd.), wherein the Tribunal has held that the service provided to Jammu and Kashmir cannot be equated to the exempted service.

3. The Ld. Authorized Representative relied on case law Adecco Flexione Workforce Solutions Ltd. Vs. C.C.E, C. & S.T., Bangalore 2016 (42) S. T. R. 202 (Tri.-Bang.), wherein it has been held that when the services are provided to clients in Jammu and Kashmir, the same would be treated as exempted Service and accordingly, Cenvat Credit reversal is required. He further relies on the case law of ECIL Rapiscan Ltd. Vs. CCE, Customs & ST, Hyderabad-II 2020 (1) TMI 898-CESTAT Hyderabad, wherein, similar issue was before the Hon'ble Tribunal. After examining the provisions of exempted services under Rule 2(e) of Cenvat credit Rules before 1/4/2011 and after 01-04-2011 and after 01/03/2016, the Tribunal held that for the service provided to the clients at Jammu and Kashmir without Service Tax payment, the same should be treated as exempted service. Accordingly, the Cenvat Credit is required to be reversed.

4. At this juncture, the Advocate for the Appellant also makes plea that the Show Cause Notice issued on 21/10/2014 is time barred. In his support, he submits that they carried a bonafide belief that Cenvat Credit reversal is not required when the Services are rendered to Jammu & Kashmir clients and at that point of time there were several decisions in their favor. In such case, there cannot be any suppression with an intent to evade reversal of Cenvat Credit.

5. He further submits that they would take back their contest of the demand on merits and prays that the issue may be decided on account of limitation itself without going into the merits. He also prays that since it is a matter of interpretation and different decisions have been given by different co-ordinate Benches of Tribunal, the penalties imposed may also be set aside.

4. Heard both sides and considered the case Law cited by both the sides.

5. Since the Appellant is not pressing their Appeal on account of merits, I confine myself to issue of time bar alone. As rightly pointed out by the Ld. Advocate, there are various decisions of the co-ordinate Benches of Tribunal on this issue, therefore the Appellant cannot be fastened with the burden of any demand pertaining to the extended period. Accordingly, I hold that the demand pertaining to the extended period is required to b9e set aside and I do so.

6. As the Appellant is not contesting the Appeal on merits, the demand confirmed and interest thereon for the normal period sustains. The penalties imposed under Section 78 and 77 are set aside.

7. The Appeal is disposed off thus.

(Dictated and pronounced in the open Court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja