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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.169 of 2011

(Arising out of Order-in-Original No.06/Commr./ST/Bol/11 dated 10.02.2011 passed by Commissioner of Central Excise, Bolpur)

M/s Emta Coal Limited
5B, Nandalal Basu Sarani, Kolkata-700071

Appellant

VERSUS

Commissioner of Central Excise, Bolpur
SIAN, Bolpur, Dist.-Birbhum, West Bental-731204

Respondent

APPERANCE :

Dr.Samir Chakraborty, Sr.Advocate and Shri Abhijit Biswas,Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…75526/2023

DATE OF HEARING : 30 .05.2023
DATE OF DECISION : 30 .05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in excavation of coal from the coal mines of Eastern Coalfields Limited. "Mining Service" comes under the purview of service tax w.e.f. 01.06.2007. Accordingly, the appellant obtained registration under Mining Service on 03.08.2007. The appellant imported a large number of capital goods/equipment during the period from October, 2007 to

March 2009 and availed cenvat credit thereof as Basic Excise Duty as well as Special Additional Duty (SAD).

2.1 During the course of verification, it was found that the appellant availed credit on SAD, which is not admissible to output service providers in terms of proviso to Sub-Rule (VIIA) of Rule 3 of Cenvat Credit Rules, 2004. The appellant reversed the cenvat credit along with interest and intimated to the Department.

2.2 Therefore, a show-cause notice was issued to the appellant on 21.09.2010 to allege the appellant has to reverse the cenvat credit along with interest and to impose penalty.

2.3 The matter was adjudicated. Demand on account of reserval of cenvat credit was confirmed along with interest and penalty to equal amount was also imposed on the appellant.

2.4 Against the said order, the appellant is before us.

3. The ld.Sr.Counsel appearing on behalf of the appellant, pointed out that the appellant has taken cenvat credit wrongly and they reversed the same along with interest before issuance of the show-cause notice. In that circumstances, the show-cause notice was not requied to issue to the appellant in terms of Section 73 (3) of the Finance Act, 1994. Therefore, the proceedings against the appellant are void ab initio and the same are not sustainable.

4. On the other hand, the ld.A.R. for the Revenue, submits that the revised return was filed by the appellant and the value of taxable service was shown less. Hence, it is not coming out whether the appellant has reversed the inadmissible credit or not.

5. Heard the parties and considered the submissions and perused the records.

6. On perusal of records, Para 4.6 of the impugned order is relevant, which is extracted below :

> *"4.6 Now, I come to the discussion regarding reversal of Cenvat Credit on SAD so claimed by the assesse in their written reply. I observe that the assesse submitted a ST-3 Return for the period October,08 to March 09 under Rule 7 of the Service Tax Rules, 1994 on 22.05.09 and mentioned in the SCN as Annexure E. In that return, the value of taxable service shown as Rs.183,77,02,884/- for the period of return. They again submitted a revised ST-3 Return for the same period on 14.08.2009 and mentioned in the SCN as Anexure F showing the taxable value as Rs.133,87,90,602/- for the period of return. I observe that in original return, they shown credit of capital goods as Rs.12,61,80,151/- but in the revised return the amount of credit was shown as Rs.9,87,32,595/-. Therefore, in the revised return there was 'reversal' of credit of Rs.2,74,47,556/-. Further, from the total credit of Rs.9,87,32,595/- in the revised return, the assesse reversed Rs.3,77,32,750/- during March 09 as 'reversal of Cenvat Credit under Rule 14 of Cenvat Credit Rules, 2004 on account of SAD taken by mistake'. Further from their letter to Jurisdictional Range Officer dated 21.08.2009 and Annexure B to the SCN it is observed that they paid Rs.14,51,190/- in cash. Therefore, according to the assesse the total liability of irregular availment of credit on SAD amounting to Rs.6,66,31,496/- including the amount of Rs.4,35,40,758/- covered in the instant SCN has been reversed by them along with interest of Rs.64,08,168/- paid vide e payment CIN No.50001 dated 13.08.09."*

7. As it is evident from the records that the appellant has already reversed the cenvat credit along with interest, which is recorded by the Adjudicating Authority in the impugned order. Therefore, the proceedings against the appellant itself was not required. The only issue in the show-cause notice is the reversal of inadmissible cenvat credit. Therefore, the issue of figure shown in the revised return of taxable service is less or more is not the issue before us. As it is apparently clear that the appellant has already reversed the cenvat credit along with interest. Therefore, the impugned proceedings are not sustainable against the appellant and are void ab-initio.

8. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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