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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75523 of 2015

(Arising out of Order-in-Appeal No. 991/Pat/S. Tax/Appeal/2015 Dated 24/02/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service tax, Patna)

M/s Anand Dewelling Pvt. Ltd.
(2nd Floor, Grand Apartment Frazer Road, Patna-800001)

Appellant

VERSUS

Commr. of CGST & Central Excise, Patna
(2nd Floor, Central Revenue Building, Birchand Patel Path, Patna-800001)

Respondent

APPEARANCE :
Mr. Manish Rastogi, Advcoate for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.76351/2023

Date of Hearing : 11 August 2023
Date of Decision : 11 August 2023

PER R. MURALIDHAR

The Appellant was a provider of construction services during the period under consideration. They have taken the benefit of exemption Notification No.1/2006-ST dated 01/03/2006. As per this Notification, they were required to pay Service Tax only on 33% of the consideration received by them as this exemption was subject to the condition that they should not take the Cenvat Credit on account of inputs, capital goods or input services used by them for providing this service. On scrutiny of their ST-3 Returns, it was found that the Appellant had taken Cenvat Credit to the extent of Rs.4,59,107/- and also used the same towards discharge of their Service Tax liability. The Department has taken the view that they are contravening the condition imposed under the Notification No. 01/2006 and issued Show Cause Notice demanding Service Tax on the entire consideration without the benefit of any abatement provided under this Notification. In the due course, the Adjudicating Authority confirmed the demand with interest and penalty. On appeal, the same was dismissed by the Commissioner (Appeals). Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that taking of Cenvat Credit was inadvertent mistake on their part and after getting proper advise and on receipt of the Order-in-Original, the Appellants have reversed the entire credit of Rs.4,59,107/-. He draws our attention to the entries made by them in their Ledger Account towards such payments made along with the details of Service Tax Challans.

3. The Learned Advocate relies on the following case laws:-

(i) Chandrapur Magnet Wires (P) Ltd Vs. CCE Nagpur,-1996 (81) EL 3(SC)

(ii) Khyati Tours & Travels Vs CCE, Ahmedabad-2011 (24) S.T.R. 456 (Tri. Ahmd)

He submits that since the Cenvat Credit taken has been fully reversed amount to availment of Cenvat Credit as held in the cited case law. Therefore, he prays that the present Appeal may be allowed.

4. The Learned AR submits that the Notification No. 1/2006-ST is a conditional Notification which specifically states that the Appellant is not eligible to take Cenvat Credit. Therefore, as Appellant has taken the Cenvat Credit and also utilized the same for discharging their Service Tax liability, he justifies the Orders passed by the lower Authorities.

5. Heard both sides and perused the documents.

6. Admittedly the fact of Cenvat Credit and utilization of the same has been recorded by the Appellant in their ST-3 Returns. Only on the basis of scrutiny of these Returns, the Department has issued the Show Cause Notice. Therefore, this proves that the Appellant has not suppressed any fact but has declared the details of Cenvat Credit taken and their utilization in

the ST 3 Returns. Therefore, we are inclined to accept their explanation that this was an inadvertent error on their part. It is also seen that after the OIO was passed, they have reversed the entire Cenvat Credit.

7. The Hon'ble Supreme Court in the case of Chandrapur magnet Wires cited supra has held as under:-

> *7. In view of the aforesaid clarification by the Department, <u>we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods. [emphasis supplied]</u>*

8. The Hon'ble Tribunal in the case of Khyati Tours & Travels cited supra has held as under:-

> *4. <u>It is seen that the appellant had reversed the wrongly availed Modvat credit along with interest, the same will have the effect as if no credit was availed by the appellants.</u> The law on the above point is very clear and stands settled by various decisions of judicial as also the quasi judicial authorities. For the sake of convenience we may refer to the order passed by Commissioner (Appeals) in the case of Om Shanti Travels, Ahmedabad being Order-in-Appeal No. 197/2010(STC)/MM/ Commr(A)/Ahd dated 9-8-2010, wherein after summarising the entire case law, the benefit stands extended to the assessee. We reproduce the relevant paragraphs from the said order:-*
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> > *"8. The appellant cited the case of M/s. Hello Minerals Water Private Limited v. UOI reported in 2004 (174) E.L.T. 422 (Allahabad). I have gone through this judgment. <u>In Para 18 of this judgment it has been held by the High Court that if the exemption is subject to non-availment of modvat credit on inputs, the subsequent reversal of</u>*

<u>modvat credit amounts to non-taking of credit on inputs and the benefit of exemption notification number 15/94-C.E., is to be granted, even when reversal of credit on inputs was done at Tribunal stage.</u>

8.1 The above judgment of the High Court is based on five member bench decision of the Tribunal in the case of Franco Italian Company Private Limited v. C.C.E., 2000 (120) E.L.T. 792. This judgment in turn based on the Supreme Court judgment in the case of Chandrapur Magnet Wire Private Limited v. C.C.E., Nagpur, 1996 (81) E.L.T.3.

8.2 I have gone through the Hon'ble Supreme Court of India's judgment in the above mentioned case, and I find that it has been laid down/held that debit entry in modvat credit account indicates as if no credit was taken on such inputs. This judgment has been followed in a number of Tribunal judgments. The latest has been a case of the Commissionerate of Service Tax itself in the case of CST, Ahmedabad v. M/s. Amola Holdings Private Limited. This judgment was given in order No. A/1148/WZB/AHD/09 dated 1-6-2009. This judgment also stands accepted by the Commissionerate and hence I follow the same and hold that reversal or debit of modvat credit in this case of 9595 rupees amounts to non-availment of modvat credit and accordingly, the appellant is eligible to the benefit under Notification No. 1/2006."

5. <u>Inasmuch as the appellants have admittedly reversed the credit along with interest, we find that benefit of the notification in question would be available to them. Accordingly, we set-aside the impugned order and allow the appeal with consequential relief to the appellants. Stay petition also get disposed off. [emphasis supplied]</u>

9. In the present case, the Appellant has reversed the entire Cenvat Credit taken. Therefore, we hold that the confirmed demand of Rs.22,13,962/- along with interest is required to be set aside and we do so.

10. However, as pointed out by the Learned AR, it is seen that the Appellant has only reversed the Cenvat Credit without paying the relevant interest. We hold that the Appellant is required to pay the interest for the period when the Cevat Credit was taken till the time they have reversed the

Cenvat Credit, as per the applicable rate of interest at that particular point of time. Since the Appellant has contravened the conditions imposed under in the Notification, they cannot be absolved from penalty and they are also required to pay the penalty. We hold that they are required to pay penalty of Rs.1.25 lakhs.

11. The Appeal is partly allowed and disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

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

Pooja