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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.328 of 2011

(Arising out of Order-in-Original No.67/Commr/ST/Kol/2010-11 dated 31.03.2011 passed by Commissioner, Service Tax, Kolkata.)

M/s. West Bengal Industrial Development Corporation Limited
(23, Abnindranath Thakur Sarani (Camac Street), Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

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

<u>APPEARANCE</u>

Shri B.R. Dutta, FCA for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 77533/2023</u>

DATE OF HEARING : 20 November 2023
DATE OF DECISION : 20 November 2023

Per : R. MURALIDHAR :

The Appellant is a Govt. entity working under the Ministry of Industries, Government of West Bengal. They have taken Service Tax registration and were providing 'Banking and other Financial Services'. They were issued Show Cause Notice on the ground that they did not pay Service Tax and had wrongly availed the Cenvat Credit. The Show Cause Notice was issued by invoking the extended period provisions by alleging that they have suppressed the required details because of which the alleged excess Cenvat Credit taken and alleged non-payment of Service Tax came to light in the later. After due process, the adjudicating authority confirmed the demand of Rs.54,41,023/- on the ground that they have short paid the Service Tax in respect of services provided by them. He also held that the Appellant is not eligible for Cenvat Credit of Rs.2,03,75,259/-. In the Order-in-Original he has also held that the Appellant has collected Service Tax of Rs.22,44,000/- and has not remitted the same to the Revenue department and hence the same is required to be paid by them. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Consultant submits that they have made excess payment of Rs.61,20,000/- which is required to be adjusted against the confirmed demand of Rs.54,41,023/-. He takes us through page No.81 and 82 of the Appeal Paperbook. He submits that Bill No.001/WBIDFC/2004-05 dated 30.11.2004 was raised on West Bengal Infrustructure Development Corporation (WBIDFC) for Rs.6,00,00,000/- along with Service Tax of Rs.61,20,000/-. WBIDFC vide letter dated 26.12.2006 has refunded Rs.61,20,000/- on account of Service Tax and has held that invoice of Rs.6,00,00,000/- is to be treated as cancelled. Therefore, the Consultant submits that the amount of Rs.61,20,000/- which was not required to be paid by the Appellant, was paid by them. Hence, as per him, this amount is required to be adjusted against the confirmed demand of Rs. 54,41,023/-.

3. In respect of Cenvat Credit taken by them he submits that the actual amount of Cenvat Credit taken by them is for Rs.1,79,76,495/- only. He submits that all the requisite details along with documentary evidence were produced before the adjudicating authority, but still he has confirmed the demands. Therfore, he submits that the Appeal is required to be allowed on merits.

4. He further submits that the department is in error in invoking the extended period provisions to confirm the demands. The Appellant is a Govt. of West Bengal entity and does not stand to gain anything by suppression of any facts. As a matter of fact they have been regularly filing the returns and all the transactions have been properly captured and reflected in the ST-3 returns. Similarly all the transactions are recorded in their Books of Account which are required to be audited

statutorily by the CAG. Therefore, he submits that when no suppression is involved, confirmed demand for extended period is required to be set aside on account of limitation also.

5. The Ld.AR reiterates the findings of the adjudicating authority. He further submits that in case of their Bill raised on WBIDFC, from the invoice it is clear that the Appellant is claiming to have provided consultancy services. The letter dated 26.12.2006 from the WBIDFC clarifies that they have made the payment of Rs.61,20,000/- towards the Service Tax component, though they have not paid the main amount of Rs.6,00,00,000/-. Therefore, he submits that the Appellant cannot retain this amount and justifies the confirmation of this amount by the adjudicating authority.

6. He further submits that in respect of Cenvat Credit taken the Appellant has not produced the relevant documentary evidence before the adjudicating authority. Therefore, Cenvat was correctly disallowed by the adjudicating authority. He submits that as the non-payment of Service Tax and taking of ineligible Cenvat Credit has come to light only after audit, the adjudicating authority has correctly concluded that suppression has taken place. He prays that the Appeal may be dismissed.

7. Heard both the sides and perused the documents.

8. In respect of Rs.61,20,000/- though the Appellant claims that the actual amount of Rs.6,00,00,000/- was not paid by WBIDFC, still it is on record that they have made the payment of Service Tax. In such a case, the Appellant cannot retain this amount. Therefore, we reject their submission that this amount is required to be adjusted against the confirmed demands.

9. In respect of the Cenvat credit taken, the adjudicating authority has held that they have not produced any documentary evidence and hence he has confirmed the demands. Therefore, in the normal course this issue should be remanded to the adjudicating authority for proper verification once again.

10. However, we see force in the arguments of the Appellant that the extended period should not be invoked in their case. We find that the Appellant is a Govt. entity and they have been filing the Returns regularly. There is nothing to assume that they have suppressed any fact so as to make any gain on account of non-payment of Service Tax and by taking ineligible Cenvat Credit as alleged by the Revenue. Therefore, we do not see the reason for invoking the extended period in this case. We hold that the demand for the extended period is required to be set aside on account of limitation alone. Both sides agree that entire demand is in respect of extended period only. Therefore, we allow the Appeal on limitation itself without going into the merits.

Appeal disposed of as above.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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