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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75869 of 2015

(Arising out of Order-in-Original No. 09/Commissioner/ST/Haldia/Adjn/2015 dated 21.04.2015 passed by the Commissioner of Central Excise & Service Tax Haldia Commissionerate, 25 Princep Street Kolkata-700 072)

M/s. G. K. Construction. **: Appellant**
Vill. Raghunathchak, New Colony
P.O. Bhuniaraychak, Durgachak,
Haldia, Purba Medinipur, W.B.721635

VERSUS

Commissioner of Central Excise & Service Tax, **: Respondent**
Haldia Commissionerate
25 Princep Street Kolkata-700 072

APPEARANCE:

Shri S. P. Siddhanta, C.A. for the Appellant

Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75480/2025

DATE OF HEARING / DECISION: 10.02.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No. 09/Commissioner/ST/Haldia/Adjn/2015 dated 21.04.2015 passed by the Commissioner of Central Excise & Service Tax Haldia Commissionerate, 25 Princep Street Kolkata-700 072, wherein the Ld. Commissioner has confirmed the demand service tax of Rs. 1,01,02,600/ including cesses. He has appropriated the amount of Rs 74,31,764/ paid by the Appellant against the confirmed demand of service tax and cesses. He has imposed a penalty of Rs. 1,01,02,600/ under section 78 of the said Act and a penalty of Rs. 10,000/ in terms of section 77(1)(d) of the said Act for failing to pay service tax electronically.

2. M/s. G.K. Construction (herein after referred as the appellant) has been registered under Service Tax, for providing services namely Manpower recruitment agency services and Construction Services. Scrutiny of ST-3 returns filed by the Appellant for the period 2010-11 to 2012-13 (upto December, 2012), revealed that as against the service tax liability of Rs. 1,01,02,600/- for the said period, the Appellant has paid Service tax of Rs.24,31,764/- only. Accordingly, investigation was initiated by the Anti-Evasion wing of the Haldia Commissionerate and some documents were seized. During the course of investigation, the appellant paid Rs. 50,00,000/- against their service tax liability.

2.1. On completion of investigation, a SCN dated 09.06.2014 was issued to the appellant demanding service tax of Rs.1,01,02,600/- along with interest and penalty. After due process, the said notice was adjudicated, which resulted in the impugned order. Aggrieved against the confirmation of demands of service tax along with interest and imposition of penalty, the appellant has filed this appeal.

3. The Appellant submits that the quantification of service tax has not been done properly. It is their submission that for the 'supply of manpower service' to M/s. Rohit Ferrotech Ltd., service tax has been rightly demanded on 25% of the bill value from 01.07.2012 whereas in case of Ennor Coke Ltd., service tax has been demanded on 100% of the bill

amount from 01.07.2012. Had it been considered, the demand would have come down by Rs. 72,242/. The Appellant requests to reduce the service tax demand to this extent.

3.1. The appellant further submits that they are eligible to use Cenvat Credit of Rs.23,77,373/- but the same has not been allowed by the adjudicating on some procedural grounds. The Appellant submits that CENVAT credit of service tax of Rs. 23,77,373/- has been claimed on the basis of a statement of bills supported by copies of all bills. However, the Ld. Commissioner has not allowed the credit, on the basis of his findings that the said services were not utilized in or in relation to provide output services. It has also been contended that in the invoices the address has been shown as "Basudevpur, Haldia, Purba Midnapur. Regarding use of input services, such as hiring of machinery and loading/unloading charges, the Appellant submits that the output services have been provided on taking of machinery on hire and also by his own machinery and loading/unloading by receiving such services at the port area. Therefore, there cannot be any doubt about the use of the said input services in or in relation to provide their output services. Regarding the address, the Appellant submits that their office is situated at 'Basudevpur, Haldia, Purba Midnapur and so the bills were raised in the said address. However, on request by the Appellant, the service providers have been pleased to insert the address of 'Vill. Raghunathchak, New Colony, P.O. Bhuniaraychak, Durgachak, Haldia, Purba Midnapur' and therefore the credit should be allowed on the basis of the invoices wherein the address has been corrected. In support of this claim, the Appellant relies on the decisions of the Tribunal in the case of Om Textiles Vs. Commissioner of Central Excise, New Delhi reported in 2006(199)E.L.T.47 (Tri.-Delhi). In the case of Commissioner of Central Excise Vs. Chemplast Sanmar Ltd. reported in 2007(5)S.T.R.18(Tri-Chennai), it has been held that corrected invoices are valid documents for taking credit. The Appellant also relies on the decision of the Tribunal, WZB, Ahmedabad in the case of PLASTIC PRODUCTS ENGG. CO. Versus COMMISSIONER OF C. EX., AHMEDABAD reported in 2009 (248) E.LT. 859 (Tri. Ahmd.).

3.3. The Appellant submits they are also eligible for CENVAT credit of Rs. 4,90,404/- availed on different machineries which falls within the definition of 'capital goods' under rule 2(a) of the Credit Rules and since the machineries were used for providing output services, the said CENVAT credit of capital foods must be allowed.

3.4. The appellant submits that the Ld. Commissioner while disallowing the CENVAT credit, has observed, inter alia, that the Appellant neither showed the details of credit in the ST-3 returns nor disclosed the said credit before the investigating authority. In this regard, the Appellant submits that when the demand has been confirmed, the credit is allowable. In support of the above contention, the Appellant relies on the decision of the Tribunal of Eastern Bench, Calcutta in the case of National Plywood Vs. Commissioner of Central Excise, Shillong 1999(107)ELT.464). The appellant also relies on the decision of the Hon'ble CESTAT, WZB, Mumbai in the case of CHAKAN SOAPS & CHEMICALS (P.) LTD. Versus COMMISSIONER OF C EX, BELAPUR reported in 2014 (307) E.L.T. 911 (Tri. - Mumbai), wherein while allowing credit, it has been observed in para 6 of the order as follows:-

> *"6. In the appeal filed by the appellant manufacturer, the claim is only in respect of credit of duty paid on inputs utilized in the manufacture after crossing the limit of clearance under small scale exemption Notification. The appellant manufacturer is entitled for credit of duty paid on inputs by producing the duty paying document. The appellant manufacturer is directed to produce the duty paying document within a period of 8 weeks from the date of receipt of this order. On production of such document, the adjudicating authority will decide the admissibility of credit, after affording an opportunity of hearing to the appellant manufacturer. The appeal filed by the appellant manufacturer is disposed of as indicated above."*

3.5. The Appellant submits that had the CENVAT credit is allowed then it is evident that the entire service tax was paid before issue of the notice. Thus, the appellant submits that the provisions of section 80 of the Finance Act, 1994 is applicable to the present case and hence no penalty imposable on them.

3.6. The appellant submits that the SCN dated 09.06.2014 was issued on the basis of scrutiny of ST-3 returns for the period from 2010-11 to 2012-13 up to December, 2012 and so the demand up to December, 2012 is beyond eighteen months and hence barred by limitation. Hence, the demand confirmed by invoking the extended period of limitation is not sustainable.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that scrutiny of ST-3 returns filed by the Appellant for the period 2010-11 to 2012-13 (upto December, 2012), revealed that the appellant has short paid service tax of Rs. 1,01,02,600/- for the above said period. We observe that the appellant has not disputed the liability of service tax payable by them.

6.1. We observe that the appellant has registered with Service Tax department and paying service tax and filing ST-3 returns regularly. During the period under dispute, the appellant has paid service tax of Rs.24,31,764/- only, as per the returns filed. When the short payment was pointed by the investigation officers, the appellant paid an amount of Rs.50,00,000/- towards their service tax liability. Thus, we observe that the appellant has paid service tax of Rs. 74,31,764/- before issue of the Notice.

6.2. In respect of the remaining amount confirmed in the impugned order, the appellant submits that they are eligible to avail Cenvat credit of Rs. Rs. 23,77,373/-on input services and Rs. Rs. 4,90,404/- on capital goods. If this credit is allowed for payment of service tax, then they would have discharged the entire service tax liability before issue of the Notice. The appellant also submits that service tax liability of 'Supply of Manpower Service' rendered by them to M/s.Ennor Coke Ltd., service tax has been demanded on 100% of the bill amount, instead on 25% of the bill amount, from 01.07.2012. Had it been considered, the demand would have come down by another Rs. 72,242/.

6.3. Regarding the CENVAT Credit of Rs. 23,77,373/-claimed by the appellant on input services, we observe that the appellant has availed the credit of service tax paid on input services such as hiring of machinery and loading/unloading charges. The Ld. adjudicating authority has not allowed the credit on the ground that there is no evidence regarding use of such input services for providing out put services. We find that the Appellant has used the machinery on hire as well as his own machinery for rendering of the loading/unloading services in the port area. Therefore, we hold that the appellant has used the said input services in or in relation to provide their output services. Regarding the other ground taken by the adjudicating authority that the invoices have mentioned the address of the appellant's office situated at 'Basudevpur, Haldia, Purba Midnapur, we find that on request by the Appellant, the service providers have inserted the address of 'Vill. Raghunathchak, New Colony, P.O. Bhuniaraychak, Durgachak, Haldia, Purba Midnapur' in the invoices. Thus, we hold that the appellant is eligible to avail the Cenvat credit on the input services amounting to Rs.23,77,373/-. We observe that credit should be allowed on the basis of the invoices wherein the address has been corrected. This view has been supported by the decision of the Tribunal in the case of Commissioner of Central Excise Vs. Chemplast Sanmar Ltd. reported in 2007(5)S.T.R.18(Tri-Chennai), wherein it has been held that corrected invoices are valid documents for taking credit. The same view has been held in the decision of the Tribunal, WZB, Ahmedabad in the case of PLASTIC PRODUCTS ENGG. CO. Versus COMMISSIONER OF C. EX., AHMEDABAD reported in 2009 (248) E.LT. 859 (Tri. Ahmd.), wherein while allowing the credit, it has been observed in para 2 and 4 of the order the following:-

> *"2. Shri P.M. Dave, Id. Advocate on behalf of the appellants submits that appellants have three units out of which two units are located very near to each other and one more is located in a village near Sanand. He submits that the dispute has arisen in respect of 8 invoices out of which two invoices were in the name of Unit-III and the remaining 6 were in the name of Unit-II whereas credit was taken in Unit-I according to the audit party which visited the unit. He submits that while the name and the address of the unit had been indicated correctly, while giving the ECC number of the unit, the suppliers had made a mistake and had mentioned it as 003 or 002 at the end of the registration number Actually the last three digits viz 001 to 003 represent the Units-I, II and III since all of them have the same pan number. He submits that the show cause notice was issued on the ground that the invoice was not in the name of the Unit-I whereas for confirmation of demand both the lower authorities have taken a stand that even though the claim by the appellants that the name of the unit was mentioned correctly and ECC number was wrongly mentioned, they have held that the appellants have failed to show that the inputs have not been received in the other units and not utilized. This was not at all the ground in the show cause notice. He submits that in respect of two invoices are in the name of Una-III which has the same address as Unit-1. Whereas in*

respect of other 6 invoices, the ECC number was suffixed by 002 meant for Unit-II whereas the address of the unit was shown correctly since it happens to be a different address altogether. He submits that this shows clearly that at least in respect of 6 invoices the findings of the lower authorities that it could have been used in the other unit is totally incorrect since the recipient's address viz. Unit-I has been shown correctly.

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4. After appreciating the submissions from both the sides, I find that the issue stands no more res integra. In the case of Larsen & Toubro v. Collector of Central Excise, Bhubaneswar [1994 (72) E.LT. 948 (Tribunal)], it was held that duty paying documents showing address of other unit of the same manufacturer should be considered the valid duty paying documents for the purposes of Modvat credit. I further note that Commissioner (Appeals) has not followed the relied upon decision in the case of CCE, Salem v. Chemplast Sanmar Ltd. [2007 (208) ELT. 208-2007 (5) STR. 18 (Tribunal)] on the ground that in that case the invoices which were in the name of Unit No.-II were subsequently got corrected in the name of Unit No.-1, as such, decision is not applicable to the facts of this case, I find that it was only a rectifiable mistake and as explained by the appellant, the ECC code was wrongly mentioned by supplier of the inputs as he was supplying to all the three units. As long as there is no dispute that the inputs were not received by the appellants and not utilized by the manufacturer in the final products, denial of credit on procedural ground would not be in accordance with the statute. I accordingly set aside the *impugned order and allow the appeal with consequential relief to the appellant."*

6.4. Thus, by relying on the decisions cited above, we hold that the appellant is eligible to avail the input service credit amounting to Rs.23.77,373/-.

6.5. Regarding the availability of CENVAT credit of Rs. 4,90,404/- on different machineries used by the appellant for proving output services, we observe that the machineries purchased by the appellant falls within the definition of 'capital goods' under rule 2(a) of the Credit Rules. Since the machineries were used for providing output services, we hold that the appellant is eligible for the Cenvat credit of said CENVAT credit of Rs. 4,90,404/- on different machineries.

6.6. We also observe that in respect of the service of 'supply of manpower service' to M/s. Rohit Ferrotech Ltd., service tax has been rightly demanded on 25% of the bill value from 01.07.2012 whereas in case of Ennor Coke Ltd., service tax has been demanded on 100% of the bill amount from 01.07.2012. In respect of 'supply of manpower service' rendered to Ennor Coke Ltd also the appellant is liable to pay service tax on 25% of the bill value only. Accordingly, we hold the demand confirmed in the impugned order is liable to be reduced by Rs. 72,242/.

6.7. Regarding the penalty imposed on the Appellant, we observe that if the CENVAT credit as discussed in paras 6.3 to 6.5 is allowed for payment of service tax the liability of service tax is reduced to the extent as discussed in para 6.6 supra, then it would mean that the entire service tax has been paid by the appellant before issue of the notice, along with interest. Thus, no SCN need to be issued as per section 73(3) of the Finance Act, 1994. Further, we find that the SCN in this case has been issued on the basis of scrutiny of ST-3 returns for the period from 2010-11 to 2012-13 up to December, 2012 and so the demand up to December, 2012 is beyond eighteen months and hence barred by limitation. Thus, we hold that the demand confirmed by invoking the extended period of limitation is not sustainable. For the same reason, we hold that no penalty imposable on the appellant.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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