IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/85993/2018

(Arising out of Order-in-Appeal No. MKK/352/RGD APP/2017 dt.19.12.2017 passed by the Commissioner of Central Tax (Appeals), Raigad)

M/s. Anantnath Developers : **Appellant**

VS

Commissioner of Central Tax, Raigad : **Respondent**

<u>Appearance</u>

Shri Rajiv Luthia, C.A. for Appellant

Shri V. R. Reddy, Asstt. Commr.(A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Date of hearing : 31/05/2018
Date of decision: 31/05/2018

ORDER NO. A/86622/2018

Per : Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against order-in-appeal No. MKK/352/RGD APP/2017 dt. 19.12.2017 passed by Commissioner of Central Excise (Appeals) Raigad.

3. The short issue involved in the present appeal is: whether the appellants are entitled for cenvat credit of service tax paid on the retention money relating to construction service rendered by the Appellant.

4. The Ld. Chartered Accountant for the appellant submits that the appellant are in the business of providing construction service. During the period 2013-14 and 2014-15, an amount of Rs.19,31,306/- has been retained by their client, that is, the service receivers as per the performance guarantee clause of the service contract. However, the entire amount of service tax,, applicable on such retention money, amounting to Rs.2,38,710/- had been paid and consequently cenvat credit was availed by them. Alleging that under the provisions of Rule 4(7) of Cenvat Credit Rules, 2004, till the retention amount is received, the cenvat credit of the amount of service tax paid not admissible, the same was proposed to be denied to them. It is the contention that since the amount of service tax had been paid and the condition of the contract was to ensure performance, 5% of the service charge payable has been retained for a period of 12 months from the date of completion of the project. It is his argument that since the amount of service tax was already paid on the retention money, therefore, the credit on the same is admissible, irrespective of the fact, whether the amount is paid immediately or otherwise. In support, he has referred to the judgment of this Tribunal in the case of Commissioner of Central Excise, Pune-I Vs. Thermax Engineering Construction Co. Ltd. 2017 (12) TMI 1191-CESTAT

MUMBAI. It is his contention that, now, since the said retention amount has been paid fully, therefore, credit of the service tax paid earlier is admissible.

4. Ld. AR for the Revenue reiterates the findings of the Ld. Commissioner (Appeals).

5. I find that the reason for which the cenvat credit was denied to the appellant rests on the interpretation of Rule 4(7) of CCR,2004. It is the stand of the department that the appellant has not been paid the value of the service charge, but 5% of the value of the service, has been retained as retention money for a period of 12 months from the date of the completion of project, as per the contract, as a guarantee towards performance of the obligation of the contract. The Ld. Chartered Accountant has categorically submitted that the entire amount has now been paid, therefore, the cenvat credit is admissible. I find force in the contention of the Appellant. Otherwise also, the issue has been settled by this Tribunal in Thermax Engineering Construction Co. Ltd. case (supra). After analyzing the issue this Tribunal has observed as below:

> *"4.1 He also submitted that the retention of amount out of bill amount was for specific performance of contract. They are placing purchase order on their sub contractors and take corresponding guarantee from the sub contractors. The purchase order provides for 5% of retention of bill amount. That service tax amount is paid by them in full to the sub contractors and only retention amount is retained. Further entire service tax was paid by the contractors to the government. Thus when service tax was paid in full, credit cannot be denied. He relies upon the Circular No. F.122/3/2010-ST dt. 30.04.2010 and Tribunal order in case of MARUTI UDHYOG LTD. 2004 (166) ELT 360 (T)."*

6. In the result, the credit is admissible on the retention amount which is now paid. Accordingly, the impugned order is set aside and the appeal is allowed.

(Pronounced & Dictated in court)

(Dr. D.M. Misra)
Member (Judicial)

SM.