IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/87729/2017

[Arising out of Order-in-Appeal No: MKK/08/RGD APP/2017 dated 24/08/2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad.]

Bharat Petroleum Corporation Ltd …***Appellant***

versus

Commissioner of GST & Central Excise
Navi Mumbai ***…Respondent***

Appearance:

Shri Sachin Chitnis, Advocate for appellant

Shri M R Melvin, Superintendent (AR) for the respondent

Date of hearing	16/03/2018
Date of pronouncement	16/03/2018

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Hon'ble Shri M V Ravindran, Member (Judicial)

ORDER NO: A/85894 / 2018

This appeal is directed against Order-in-Appeal No: MKK/08/RGD APP/2017 dated 24/08/2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad.

2. Heard both the sides and perused the records. On perusal of the records, it transpires that the issue is regarding penalty imposed on the appellant for, availment of ineligible CENVAT credit.

3. On due consideration of the submissions made by both the sides I find that the appellant is a public sector undertaking; had availed CENVAT credit on leasing infrastructure at CETTM help desk, housekeeping service, civil construction work, psychometric assessment of students and rent of aviation fuel station at Guahati. Audit party had raised objection and the appellant herein reversed the entire credit in their PLA along with interest. The lower authorities after adjudication, confirmed the demand along with interest, appropriated the amount paid and imposed equivalent penalty. The first appellate authority has also upheld the penalty.

4. The main plank of argument of the Learned Counsel is that the appellant being a public sector undertaking cannot be held to be availed any ineligible credit with intention to evade and impose penalty under Section 11AC of the Central Excise Act, 1944.

5. I find that the availment of CENVAT credit by the appellant on the various services as indicated herein above could be a situation wherein the appellant could have had a *bonafide* belief that such service being in or in relation to the manufacturing/refining undertaken by them was eligible to be availed as CENVAT credit.

6. Having reversed the entire amount along with interest and also noting that the appellant is a public sector undertaking and could not have any intention to avail wrong credit and this wrong availment of CENVAT credit can be attributed to human error, which has been rectified by reversing same amount in PLA along with interest, I do not find any reason to visit with the appellant with penal Provisions of Section 11AC as the appellant being a public sector undertaken. My this view is fortified by the judgment of the Tribunal in the case of *Markfed Refined Oil & Allied Industries v. Commissioner of Central Excise, Jalandhar* 2008 (229) ELT 557 which was been upheld by the Hon'ble High Court of Punjab & Haryana as reported in 2009 (243) ELT A91 (P&H). This view has been followed by the Division Bench of this Tribunal in the case of *Indian Institute of Technology v. Commissioner of Service Tax – II, Mumbai* 2016 (42) STR 406 (Tri.Mumbai).

7. Respectfully following the same I hold that the impugned order to the extent it confirms the demand and interest is upheld and to the extent it imposes a penalty is set aside.

8. The appeal is disposed off in the above terms.

(Pronounced in Court)

(M V Ravindran)
Member (Judicial)

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