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

Appeal No. ST/88113/17

(Arising out of Order-in-Appeal No. MKK/44/RGD/APP/2017 dated 18.9.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad).

M/s Orange Business Services Indian Technology Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Raigad	Respondent

Appearance:

Shri Ritesh Negandhi, C.A.	for Appellant
Shri M.P. Damle, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 08.06.2018

Date of Decision: 08.06.2018

ORDER NO. **A/86842 / 2018**

Per: Dr. D.M. Misra

This is an appeal filed by the appellant against Order-in-Appeal No. MKK/44/RGD/APP/2017 dated 18.9.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Raigad.

2. The short issue involved in the present appeal is whether the appellants are liable to penalty under Rule 15(3) of CENVAT

Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 and Section 77 of the Finance Act, 1994.

3. Learned Counsel for the appellant submits that inadvertently they have availed Service Tax credit of Rs.2,67,630/- of the Service Tax paid on mobile and telephone charges of the employees. It is his contention that the value of such service charges is also collected by the appellant from the employees. When it was pointed out to the appellant by the CERA Audit, they immediately paid the entire amount with interest before issuance of show-cause notice. Hence, imposition of penalty under Rule 15(3) read with Section 78 of the Finance Act, 1994 is not warranted. He also submits that imposition of penalty under Section 77 for contravention of the provisions is also not warranted as the same is a residuary provision.

4. Learned AR for the Revenue submits that even though the principles of law is very clear in this regard that the appellant is not eligible to avail the credit of the amount but same has been availed for the year 2007-08 to 2011-12. It is his contention that this amounts to suppression of facts for availing the inadmissible credit. Accordingly, penalty has been rightly imposed under Rule 15(3) of the CENVAT Credit Rules read with Section 78 of the Finance Act, 1994. However, he fairly accepts that the benefit to discharge 25% of the penalty imposed has not been extended by both the authorities.

5. Heard both sides and perused the records.

6. I find that the appellants have availed the credit of Service Tax paid on mobile and telephone charges, the value of which was collected from their employees during the period 2007-08 to 2011-12. However, on pointing out by the CERA Audit, the appellant have reversed the credit with interest. The credit was availed wrongly for a continuous period of five years and such fact was not brought to the notice of the Department. In these circumstances, penalty under rule 15(3) is sustainable. However, the appellant is eligible to discharge 25% of the penalty imposed on them subject to fulfillment of the condition laid down under the relevant provision. Since penalty has already been imposed under Rule 15(3) read with Section 78 of the Finance Act, 1994, I do not find any justification for imposing further penalty under Section 77 of the Finance Act, 1994.

7. The impugned order is modified to the extent mentioned above. Appeal is partly allowed.

(Dictated and pronounced in the Court)

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

Sinha