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

APPEAL NO. ST/87977/2018

(Arising out of Order-in-Appeal No. MUM-DGPM-WRU/ APP-94/2017-18 dated 10.04.2018 passed by the Principal Additional Director General, DGPM, WRU, Mumbai.)

M/s UPS Jetair Express Private Limited Appellant

Vs.

Commissioner of CGST, Mumbai East Respondent

Appearance:

Ms. Lata Bafna, Tax Manager, UPS for Appellant
Shri Sudhir B. Mane, Assistant Commissioner (AR) for Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 15.10.2018
Date of Decision: 18.10.2018

ORDER NO. A/87664/2018

Per: Ajay Sharma

The present appeal is arising from the impugned order dated 10.04.2018 passed by the Principal Additional Director General, DGPM, WRU, Mumbai in Order-in-Appeal No. MUM-DGPM-WRU/ APP-94/2017-18. In the present case CENVAT credit of ₹ 81,854/- has been denied to the Appellant on the ground that the service tax registration number of vendor was not mentioned in its input invoices. It is an admitted fact that as soon as the Audit raised the objection, on 10.05.2010 itself the Appellant submitted the service tax registration of the vendor along with invoices and prayed that since the vendor was registered under Service Tax laws, therefore inadvertent error on the invoices should not be used as a basis to deny the CENVAT credit. But still, the Revenue rejected the CENVAT credit and issued a show-cause notice dated 26.02.2012 after invoking the extended period of limitation as to why:-

> *"(i) CENVAT credit of ₹ 81,854/- (Rupees eighty one thousand eight hundred and fifty four only) taken/utilised in respect of invoices mentioned in Para (3) above should not be disallowed and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with the proviso to Section 73(1) of Finance Act, 1994.*
> *(ii) Interest should not be demanded & recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of Finance Act, 1994;*
> *(iii) Penalty should not be imposed upon them for failure to pay Service Tax under Rule 14 of the CENVAT Credit Rules, 2004 and Section 76 of the Act.*
> *(iv) The penalty should not be imposed upon them under Rule 15(3) of the CENVAT Credit Rules, 2004 read with the provisions of Section 78 of Finance Act, 1994."*

2. The Adjudicating Authority vide Order-in-Original dated 30.12.2015 confirmed the demand of Service Tax along with interest and penalty under Section 78 of the Finance Act, 1994. The first Appellate Authority vide impugned order dated 10.04.2018 rejected the appeal filed by the Appellant and upheld the order of the Adjudicating Authority.

3. I have heard Learned Tax Manager for the Appellant and Learned Authorised Representative for the Revenue and perused the records. The issue to be decided in this appeal is whether the Appellant has contravened the provisions of Rule 11(2) of Central Excise Rules, 2002 and Rules 9(2) of CENVAT Credit Rules, 2004 by availing CENVAT credit on the input invoices which did not bear service tax registration of the vendor. On perusal of the records, it is clear that the vendor applied for service tax registration number

on 17.10.2001 and the same was allowed to the vendor on 29.04.2005 i.e. much before the vendor issued invoices to the Appellant for the period in question. It is not the case of Revenue that the vendor has not paid the Service Tax which was collected by him from the Appellant, who have utilised their services. CENVAT credit is being denied to the Appellant only on the ground that the invoices were not having the registration number of the service provider. There is no allegation or finding to the effect that the input services were not received by the Appellant or that the said services were not covered under the scope of eligible input services in terms of CENVAT Credit Rules, 2004. It is not disputed that after pointing out by the Audit about non-mentioning of service tax registration number, the Appellant immediately provided the same to them. There is no dispute that the Appellant had made substantial compliance for availing the CENVAT credit, whatever error or discrepancy has occurred that too was rectified by the Appellant without any delay. Non-mentioning of registration number is merely a procedural lapse. It is settled legal position that CENVAT credit should not be denied on mere technicalities or procedural lapses.

4. In view of the above, I hold that the Appellant is entitled to CENVAT credit and since there is no contumacious or deliberate defiance of law, extended period of limitation is not attracted in the present case. The appeal is thus allowed with consequential relief, if any.

(Pronounced in Court on 18.10.2018)

(Ajay Sharma)
Member (Judicial)

Prasad