

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

Appeal No. ST/87418/2017

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-75-17-18
dated 07.07.2017 passed by Commissioner of Central Tax
(Appeals), Pune II)

Precision Camshafts Ltd.

Appellant

Vs.

**Commissioner of Central Excise,
Pune II**

Respondent

Appearance:

Shri Prasad Paranjape, Advocate
Shri M.K. Sarangi, Jt. Commr (AR)

for appellant
for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing: 14.06.2018
Date of Decision : 12.10.2018

FINAL ORDER NO. A/87649/2018

Per: S.K. Mohanty

This appeal is directed against the impugned order dated
07.07.2017 passed by the learned Commissioner (Appeals),
Central Excise, Pune II.

2. Brief facts of the case are that the appellant is engaged in
the manufacture of C.I. castings, falling under Chapter 7325.00
of Central Excise Tariff Act, 1985 and discharges the duty

liability as per the statutory provisions. The appellant also pays service tax under reverse charge mechanism in respect of the taxable services viz. GTA, MRA, Security, Rent-a-Cab, Advocate Services etc., as a recipient of such services. During the course of audit of financial accounts by the Audit Wing of the department, it was observed that the appellant had not paid service tax in terms of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 on facilities fees, arrangement fees and legal expenses provided to the appellant by persons located in the non-taxable territory. Such fees were charged by the service provider for availment of the External Commercial Borrowings (ECB) loan to the appellant. Pursuant to the audit objection raised by the department, the appellant contended that it had not actually received the disputed services and the said services were received by various bankers viz. Bank of Baroda and Bank of India. Thus, it is contended by the appellant that those service recipients should actually be liable to pay service tax under reverse charge mechanism as deemed service providers. However, the submissions made by the appellant were not accepted by the department and accordingly, show-cause proceedings were initiated, seeking for recovery of the service tax amount along with interest and for imposition of penalties. The show-cause notice issued in this regard was adjudicated vide order dated 24.11.2016, wherein the service tax demand of Rs.17,30,668/- was confirmed along with interest and penalties

were imposed under Section 77 and 78 of the Act. The said adjudged demands were confirmed on the appellant under the *proviso* to Section 73(1) of the Act.

3. Learned Advocate appearing for the appellant submitted that the issue of payment of service tax on banking and other financial services by the recipient of service was contentious and there were divergent views of the Tribunal with regard to levy of service tax on the recipient of such services. In this context, he has relied on the decision of this Tribunal in the case of *Tata Steel Ltd. v. Commissioner of Service Tax, Mumbai – 2015-TIOL-2464-CESTAT-MUM* to state that the Division Bench of the Tribunal differed on the subject of levy of tax and, accordingly, the matter was referred to 3rd Member on reference for answering the disputed issue. Thus, he contended that in absence of clarity with regard to levy and payment of service tax, the extended period of limitation cannot be invoked for confirmation of the adjudged demand. In this context, the learned Advocate has relied on the judgement of the Hon'ble Supreme Court in the case of *Continental Foundation Jt. Venture v. Commissioner of Central Excise, Chandigarh – 2007 (216) ELT 177 (S.C.)* and the decision of this Tribunal in the case of *Jorden Electronics vs. Commissioner of Customs – 2016 (333) ELT 412 (Tri. – Del)* and *J.P.P. Mills Pvt. Ltd. v. Commissioner of Central Excise, Salem – 2016 (46) STR 317 (Tri. Che)*.

4. On the other hand, learned D.R. appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. Challenge of the impugned order in this case, is confined only to the ground of limitation. It has been contended by the appellant that the proceedings initiated by invoking the extended period of limitation under the proviso to Section 73 (1) of the Act is not sustainable for confirmation of the adjudged demand. I find from the available records that the appellant had disclosed the fact of obtaining ECB loan in foreign currency in the Balance Sheet prepared during the disputed period. With regard to levy of service tax on various expenses incurred for obtaining the ECB loan, I agree with the submissions that the appellant had genuinely entertained the belief that it was not a service receiver and since, the banks provide such service to it, they should be considered as the actual receiver of the disputed service and the service tax liability, if any, to be borne / paid by them. I also find that with regard to levy of service tax on various expenses incurred for providing loans by the banks, there were conflicting views expressed by the Members in the Division Bench, for which the matter was referred to the 3rd Member for redressal of the dispute. Thus, under such circumstances, it cannot be said that non-payment of service tax by the appellant, was owing to the

reason of fraud, collusion, willful mis-statement, etc., with intent to defraud the Government Revenue. In this case, since the period of dispute is from April 2011 to March 2012 and the show-cause notice was issued on 07.01.2016, I am of the considered view that the extended period of limitation cannot be invoked for confirmation of the adjudged demand and the same should only be confined to the normal period. I find that the judgments relied upon by the learned Advocate for the appellant are squarely applicable to the facts of the present case. It has specifically been ruled that when there was difference of opinion regarding includability of certain fees in the assessable value, necessitating reference of the dispute to a 3rd Member, the extended period of limitation cannot be invoked.

7. In view of above, the impugned order cannot be sustained on the ground of limitation. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant on the ground of limitation alone, without considering other aspects involved in the appeal.

(Order pronounced in Court on 12.10.2018)

(S.K. Mohanty)
Member (Judicial)