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

Appeal No. ST/87167/2018

(Arising out of Order-in-Appeal No. V2(A)STII/750/2617-17 dated 28.02.2018 passed by Commissioner of CGST & Central Excise (Appeals), Belapur, Navi Mumbai)

DDB Mudra Max P. Ltd. **Appellant**

Vs.

Commissioner of CGST **Respondent**
Belapur, Navi Mumbai

Appearance:

Shri Vinod Awtani, C.A. for appellant
Shri A.S. Parabh, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 12.09.2018

FINAL ORDER NO. **A/88206 / 2018**

Per: S.K. Mohanty

Heard both sides and perused the case records.

2. In this case, the appellant had adjusted an amount of Rs.5,67,000/- and Rs.15,00,000/- in the months of December, 2013 and March, 2014. The adjustment was on account of excess service tax paid in the months of March and April 2011. The department had acknowledged the excess payment of

service tax during the said period. However, the department had raised the objection that adjustment was required to be made in the subsequent month, as per Rule 6A of the Service Tax Rules, 1994 and not beyond such period. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 23.09.2016, wherein the disputed amount of Rs.20,67,000/- along with interest was confirmed and penalties were also imposed on the appellant. On appeal, the learned Commissioner (Appeals) vide impugned order dated 28.02.2018 has upheld the adjudged demand confirmed against the appellant. Hence, the present appeal has been preferred by the appellant before this Tribunal.

3. Appellant contended that according to the General Clauses Act, 1897, singular also means plural and hence “month” should be interpreted as “months”. Therefore, it was submitted that the service tax adjustment made in the month December 2014, in respect of excess service tax paid in the months of March and April 2011 is proper and justified, as per the provisions of Rule 6(4A) Service Tax Rules, 1994. The appellant further contended that identical case has already been decided by the Tribunal in the case of *Schwing Stetter (India) Pvt. Ltd. v. Commissioner of Central Excise, Chennai - 2016 (45) STR 101 (Tri.Che)*.

4. On perusal of the Co-ordinate bench decision relied upon by the appellant, I find that interpreting the provisions of Section 13 of the General Clauses Act, 1897, the Tribunal has held that singular include the word plural and accordingly, month also includes months. Thus, interpreting the provisions of said Act of 1897, it was held by the Tribunal that excess amount paid in the month of May 2011 can be adjusted in the subsequent months tax liability. Since the issue arising out of the present appeal is no more res integra in view of the Co-ordinate Bench of this Tribunal in the case of *Schwing Stetter (India) Pvt. Ltd. (supra)*, I am of the view that the impugned order passed by the learned Commissioner (Appeals) in upholding the adjudged demand against the appellant cannot be sustained for judicial scrutiny.

5. Therefore, I do not find any merits in the impugned order. Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk