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

Appeal No. ST/88198/2018

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/40/18-19 dated 08.05.2018 passed by the Commissioner of Central Goods & Service Tax (Appeals), Mumbai-I).

M/s Transpolar Logistics (India) Pvt. Ltd.	Appellant

Vs.

Commissioner of CGST, Mumbai South	Respondent

Appearance:

Shri H.P. Kanade, Advocate	for Appellant
Shri S.K. Hattangadi, AC (AR)	for Respondent

CORAM:

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

Date of Hearing: 04.01.2019

Date of Decision: 04.01.2019

ORDER NO. **A/85012 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. IM/CGST A-I/MUM/40/18-19 dated 08.05.2018 passed by the Commissioner of Central Goods & Service Tax (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellants are engaged in providing taxable service, namely, Freight Forwarding and Cargo Handling services during the relevant

period. During the course of audit for the period 2014-15, it was noticed that the appellant had availed CENVAT Credit of Service Tax against invoices issued by M/s DBC Port Logistics Ltd. on the service received by the appellant, but they failed to pay the service charge to said service provider. Alleging that the appellant had contravened Rule 4(7) of the CENVAT Credit Rules, 2004, credit of Rs.15,21,332/- availed wrongly was proposed to be recovered along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they preferred an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned Advocate Shri H.P. Kanade for the appellant submits that the appellant during the relevant period received services from one M.s DBC Port Logistic Ltd., who raised invoices for a total amount of Rs. 4,41,81,109/-, whereas the appellant had paid an amount of Rs.3,18,72,595/- leaving short payment of Rs.1,23,08,514/-. The proportionate credit involved on unpaid amount was Rs.15,21,332/-. Attributing reasons for said non-payment, he has submitted that there was initially some dispute relating to deficiency in service, however, the entire outstanding amount was later paid to the said service provider by raising credit note in their favour on 01.01.2016. He has submitted that the appellant had discharged interest of Rs.2,30,325/- on the CENVAT Credit amount of Rs.15,21,332/- availed for the period from 01.04.2015 to 31.12.2015. In support, he has placed a Chartered Accountant's certificate indicating the payment of outstanding dues and interest on the CENVAT credit availed by

them for the period 01.04.2015 to 31.12.2015. It is his contention that a portion of the service charges has not been paid on account of deficiency in service and retained by them till the dispute was resolved. Therefore, there is no contravention of Rule 4(7) of the CENVAT Credit Rules, 2004. Hence, the demand and penalty is unsustainable. In support, he has referred to the judgment of this Tribunal in the case of *Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Udaipur – 2017-TIOL-4243-CESTAT-DEL.*

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. Undisputedly, the appellant had received services from M/s DBC Port Logistics Ltd. during the relevant period 2014-15. Admittedly against the total amount raised in the invoices for providing input services to the appellant, there was short payment of Rs.1,23,08,514/- till 31.3.2015. Also it is accepted by the appellant that even though the amount was not paid by the appellant for more than 90 days, but they availed CENVAT Credit of Rs.15,21,332/- attributable to the unpaid amount. Forwarding reasons for said non-payment, the learned Advocate for the appellant has submitted that it was due to the dispute between the appellant and the service provider relating to deficiency in service. It is his contention that the entire amount of Rs.1,23,08,514/- was later paid on 01.01.2016. Further, he submits that they have discharged interest for the period for which the said amount of credit was availed by them. Also, the

aforesaid fact of payment of outstanding amount is supported by Chartered Accountant’s certificate and not disputed by Revenue. In these circumstances, following the precedent laid down in the judgments cited above, I do not find merit in the impugned order confirming the recovery of the credit and imposition of penalty. Consequently, the impugned order is set aside to that extent of demand and imposition of penalty and appeal is allowed to the said extent.

(Dictated and pronounced in the Court)

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

Sinha