IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. 1

APPEAL No.ST/86873/2018

(Arising out of Order-in-Appeal No.NGP/EXCUS/000/APPL/744/17-18 dated 12/02/2018 passed by the Commissioner (Appeals) GST & Central Excise, Nagpur)

Mineral Explorations Corporation Ltd., : **Appellant**

VS

CCE & ST, Nagpur : **Respondent**

Appearance

Shri Shailendra Jain, CA for Appellant
Shri S.B. Mane, Asst. Comm.(A.R) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing :17/01/2019
Date of decision:17/01/2019

ORDER NO. A/86803 / 2019

1. This appeal is directed against the impugned order dated 12/02/2018 passed by the Commissioner (Appeals), GST & Central Excise, Nagpur.

2. Brief facts of the case are that the appellant is engaged in the business of providing various taxable services, defined under the Finance Act, 1994. The appellant avails Cenvat Credit of service tax paid on the input services used/utilised for providing the taxable output service. During the period April 2013 to March 2014, the service tax audit wing observed that the appellant had availed Cenvat

Credit of service tax paid on rent-a-cab service. Since, such service was specifically excluded from the definition of input service with effect from 01/04/2011, on the basis of audit observations, the department initiated show cause proceedings against the appellants, seeking for recovery of wrongly availed Cenvat Credit, payment of interest and for imposition of penalties. The matter was adjudicated against the appellant vide order dated 16/02/2017, wherein Cenvat Credit amounting to Rs.2,00,786/- was disallowed and the appellant was directed to pay interest on such amount. Besides, the said order also imposed equal amount of penalty under Rule 15 (3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994. On appeal, the learned Commissioner (Appeals) vide impugned order dated 12/02/2018 has upheld the adjudged demands confirmed on the appellant.

3. Learned Consultant appearing for the appellant fairly concedes that during the disputed period, rent-a-cab service was specifically excluded from the definition of input service and thus, the appellant was not entitled to take Cenvat Credit on such service. However, he contended that the appellant was not aware about the changes made in the Cenvat statute and credit taken on such service was reflected in books of accounts and periodical returns were filed before the jurisdictional Central Excise authorities to such effect. Thus, he submits that since based on the records maintained by the appellant, the audit wing of service tax department came to know about the taking of Cenvat Credit on the disputed service, the irregularly availed Cenvat Credit can only be recovered within the normal period of

limitation provided under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. The learned Consultantalso contended that since the period of dispute in this case is from April 2013 to March 2014 and the show-cause notice having been issued on 20/07/2015,the same is clearly barred by limitation of time and adjudged demands confirmed by the department cannot be sustained on the ground of limitation. In this context, the learned Consultant has relied upon the decision of the Tribunal in the case of *Hindustan Insecticides Ltd., Vs. CCE, Delhi – 2017 (6) GSTL 218 (Tri-Del).*

4. On the other hand, the learned DR appearing for the Revenue reiterates the findings in the impugned order.

5. Heard both sides and perused the records.

6. The appellant herein is a public sector undertaking, fully owned by the Government of India and operates under the administrative control of the Ministry of Mines. The Cenvat Credit availed on rent-a-cab service has been reflected in the books of accounts and also in the ST-3 returns filed before the jurisdictional service tax authorities. Thus, it cannot be said that the appellant had suppressed the fact of availment of Cenvat Credit with intent to defraud the Government Revenue. Since under the un-amended definition of input service, rent-a-cab service was not specifically excluded, the appellant had entertained*the bonafide*belief that it should be eligible for Cenvat Credit. Accordingly, on pointing out the discrepancy by the audit wing,

the appellant had reversed the credit from its Cenvat Account before issuance of the show-cause notice. Thus, under such circumstances, irregularly availed Cenvat Credit can only be recovered within the normal period of one year provided under Section 11A of the Act. The proviso appended to Section 11A of the Act can only be invoked, where there are elements of fraud, suppression, willful mis-statement, etc., with intent to defraud Government revenue. In this case, since the lower authorities have not specifically alleged regarding the involvement of the appellant in the fraudulent activities, I am of the view that the show-cause proceedings initiated beyond normal period of limitation cannot be sustained for judicial scrutiny. I find that in an identical situation, this Tribunal in the case of Hindustan Insecticides Ltd. (supra) has held that the extended period of limitation cannot be invoked and the demand, if any, should be confirmed only to the normal period. The relevant paragraphs of the said order are extracted below:

> *12 The time period involved in the present case is from 2005-2006 to 2009-2010. The department has issued various show cause notices on different dates though the total demand confirmed is 3,13,56,315/-. The assessee appellant has given the submission that demand beyond the period of one year is time- barred as the department had the knowledge of the relevant facts. The assessee submits that the fact of receipt of subsidy was reflected in their profit and loss account and balance sheet and they are public sector undertaking therefore there is no question of they having any 'intent to evade payment of duty'; more so, when they have sold entire quantity of DDT manufactured to the Ministry of Health & Family Welfare, Government of India.*
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> *12.1 CESTAT in the case of CCE, Indore v. Nepa Ltd. - 2013 (298) E.L.T. 225 (Tri.-Del.) .has held that in case of Public Sector Undertaking, it would be absurd to accuse that there was 'intention to evade tax'. CESTAT in the said decision observes as under :*
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> *"8. In any case it is seen that the show cause notice has been issued after expiry of normal limitation period of one year from the relevant date and same would not survive unless the Department proves that the respondents had deliberately suppressed the relevant facts from the Department with intent to evade the duty. In this regard we find that the respondent is a Public Sector Undertaking wholly owned by the Government of India and in our view it would be absurd to accuse a wholly Government owned company of non-payment of excise duty with*

intent to evade the tax. In the circumstances of the case, in our view, it would not be correct to allege that the respondent have suppressed the relevant facts from the Department with intent to evade the payment of duty and as such longer limitation period under proviso of Section 11A(1) and the penalty under Section 11AC would not be applicable. Thus the duty demand is not sustainable on limitation, also."

7. In view of above, I do not find any merit in the impugned, so far as it confirmed the adjudged demand against the appellant beyond the normal period of limitation. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant on the ground of limitation alone.

(Pronounced and dictated incourt)

(S K Mohanty)
Member (Judicial)

PJ