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

Appeal No. ST/87814/2018

(Arising out of Order-in-AppealNo. CD/TR(Appeals)/ME/195/ 2017-18 dated 16.02.2018 passed by Commissioner of GST &Central Excise (Appeals), Thane Rural)

Jindal Drilling and Inds. Ltd. **Appellant**

Vs.

Respondent

Commissioner of CGST
Mumbai East

Appearance:

ShriVinodAwtani, C.A. for appellant
Shri S.B. Mane, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing&Decision: 21.01.2019

FINAL ORDER NO. **A/86806 / 2019**

Per: S.K. Mohanty

Brief facts of the case are that the appellant was engaged in providing various taxable services defined under the Finance Act, 1994 and for that purpose was registered with the Service Tax department.During the disputed period, the appellant had entered into contract with M/s. ONGC Ltd., for providing rigs on charter basis to them for drilling wells for exploration of oil. Since the rig was positioned by ONGC in non-designated area,the same will not fall under the purview of taxable service. Considering such aspect, the department contended that the services provided by the appellant to ONGC was categorized under “exempted service” and the appellant was required to follow the procedure prescribed under Rule 6 of the Cenvat Credit Rules, 2004. Accordingly, show-cause proceedings were initiated against the appellant, seeking for levy of interest under Section 75 of the Act read with Rule 14 of the Rules and also for imposition of penalty under Rule 15(3) of the Rules. The matter was adjudicated vide order dated 07.09.2016, wherein the adjudicating authority had confirmed the interest demand of Rs.18,39,006/- and dropped the proposal for imposition of penalty on the appellant. On appeal, the learned Commissioner (Appeals) vide impugned order dated 16.02.2018, has upheld the adjudication order, so far as it levied interest on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Learned Consultant appearing for the appellant, at the outset, submits that the proceeding is barred by limitation of time inasmuch as the period in dispute is from November 2007 to January 2008, whereas the show-cause notice was issued on 30.09.2012, which is beyond the normal period prescribed under Section 73 of the Act. He further submits that there is no element of *mensrea* in non-reversal of CENVAT Credit duringthe

material time and for that purpose, he drew attention of the bench to the observation recorded by the original authority, at page 16 in the adjudication order. Thus, learned Consultant contended that the impugned order cannot be sustained on the ground of limitation. He has relied on the decision of this Tribunal in the case of *BharatAluminium Co. Ltd. - 2016 (342) ELT 404 (Tri-Delhi)* to strengthen such stand.

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

5. Heard both sides and perused the records.

6. I find that the adjudicating authority while dropping the proposal for imposition of penalty had recorded in the adjudication order that in absence of fraud, suppression, mis-statement etc, penal provisions under Rule 15(3) of the Rules cannot be invoked. The relevant paragraph in the said order is extracted herein below:-

> *"(v) I find that penalty has been proposed under Rule 15 of the Cenvat Credit Rules, 2004 but Section 78 of the Finance Act, 1994 has not been invoked. Notwithstanding above the necessary ingredients of suppression, fraud, collusion or any willful mis-statement etc. necessary for imposition of penalty under Rule 15(3) of the Cenvat Credit Rules, 2004 and Section*

> *75 of the Finance Act, 1994 are missing in the show-cause notice. Further, I find that CENVAT Credit thus availed has not been proposed to be denied / demanded in the show-cause notice therefore provisions of Rule 15(3) are not applicable to the facts of the case and accordingly, I am not inclined to impose any penalty under Rule 15(3).*

7. On perusal of the above observations of the original authority, it transpires that there is no element of fraud, suppression, collusion, willful mis-statement etc. on the part of the appellant to evade payment to Government exchequer. Thus, under such circumstances, the show-cause notice should have been issued within one year from the relevant date. In this case, since the show-cause notice was issued on 30.09.2012, seeking for recovery of interest amount for the period 27.11.2007 to 24.02.2008, the same is clearly barred of limitation of time and such notice cannot be acted upon further to confirm the adjudged interest demand on the appellant. With regard to applicability of limitation for claim of interest amount, I find that this Tribunal in the case of *BharatAluminium Co. Ltd. (supra)*,by relying upon the judgementof the Hon'ble Supreme Court in the case of *Commissioner v. T.V.S. Whirlpool Ltd.– 2000 (119) ELT A177 (SC)* has held that the period of limitation for claiming interest will not only be applicable for the principle

amount but also for the interest thereon. Relevant paragraph in the said decision of the Tribunal is extracted herein below:-

> *"5. It is an admitted fact that irregularly availed Cenvat credit and subsequently reversal thereof is not attributable to any fraud, collusion, misstatement with intent to evade payment of duty. In such an eventuality, the Department was required to issue the SCN within a period of one year from the relevant date, i.e., reversal of Cenvat credit. Since the SCN in the present case was issued on 3-10-2013, involving the period from April, 2006 to November, 2008, I am of the considered view that the same is barred by limitation of time and confirmation of interest and penalty by the authorities below are not justified. The Hon'ble Supreme Court in the case of T.V.S. Whirlpool (supra) have held that period of limitation is not only applicable for the claim of the Principal amount, but has also applicable to the claim of interest thereon."*

8. In view of above discussions, I do not find any merits in the impugned order passed by the Commissioner (Appeals), in so far it upheld the interest demand confirmed in the adjudication order. Accordingly, after setting aside the same, appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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