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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 88262 of 2018

(Arising out of Order-in-Appeal No. NGP-II/APPL/54/17-18, dated 27.04.2018 passed by Commissioner of CGST & Central Excise, Commissionerate, Nagpur-II)

M/s Vikas S.S.K. Ltd. .....**Appellant**
Vaishalinagar, Nivli,
Dist. Latur

VERSUS

Commissioner of Central Excise & Service Tax, Nasik .....**Respondent**
Kendra Rajaswa Bhawan,
Old Agra Road, Gadkari Chowk,
Nasik - 422002

Appearance:

Shri V.B. Gaikwad, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87519/2019

Date of Hearing: 09.01.2019
Date of Decision: 09.01.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 27/04/2018 passed by the Commissioner of CGST & CE, Nagpur-II.

2. Brief facts of the case are that the appellants herein is engaged in the manufacture of sugar and molasses, falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. During the disputed period, the appellant had entered into three agreements with M/s.Mojj Engineering Systems Ltd. for manufacture, supply and erection, commissioning of multiple effect spent wash evaporation plant/distillery plant. For undertaking such installation of plant facilities, the contractors

had supplied various components to the appellants. The appellant had availed Cenvat Credit of Service Tax amounting to Rs.42,34,219/-, which was paid to the Contractor M/s. Mojj Engineering Systems Ltd. The appellant contended that out of total credit availed of Rs.42,34,219/-, the credit amounted to Rs.25,04,505/- pertains to construction of civil structures and remaining credit of Rs.17,29,714/- pertains to erection, installation/commissioning of RCC tanks. During the course of audit in the month of February 2015, the officers of the Central Excise department detected that the credit availed by the appellant is not proper and justified. Accordingly, the appellant had reversed Cenvat Credit amounting to Rs.25,04,505/- and also paid interest thereon. Based on the audit objections, the department initiated show cause proceedings against the appellants, seeking for recovery of the irregularly availed Cenvat Credit. The matter was adjudicated against the appellant wherein Cenvat Credit demand of Rs.42,34,219/- was confirmed and the amount of Rs.25,04,505/- deposited by the appellant before issuance of the show-cause notice was appropriated therein. The said order also confirmed interest demand on the appellant. Penalties were also imposed under Rule 15 (1) of the Cenvat Credit Rules, 2004 and Rule 15 (2) of the said Rules read with provisions of Section 11AC of the Central Excise Act. On appeal, the learned Commissioner (Appeals) vide impugned order has allowed Cenvat Credit of Rs.11,92,740/- and denied such Cenvat Credit of Rs.5,36,974/- on the ground that the disputed services are falling under the excluded category of inputs service defined under Rule 2 (l) of the Cenvat Credit Rules, 2004. He has also confirmed the adjudged amount of penalties imposed on the appellant.

3. Ld. Advocate appearing for the appellant submits that the disputed services were used by the appellants for installation, erection and commissioning of tanks and such services are not falling under excluded clause of the definition of input service. Thus, he submits that Cenvat Credit in respect of the service tax paid on the disputed services should be available to the appellants. He further submits that the proceedings are barred by limitation of time inasmuch as the show-cause notice was

issued beyond the normal period of limitation. The learned Advocate concedes that if the appeal is decided on the ground of limitation, then no consideration/benefit in respect of the amount paid / Cenvat credit reversed shall be claimed by the appellant.

4. On the other hand, the learned AR appearing for the revenue submits that the storage tanks were constructed by the contractors within the factory of the appellant and such service is specifically excluded from the definition of input service for availment of Cenvat Credit. He further submits that analyzing the scope of contract vis-à-vis the definition of the input services, the learned Commissioner (Appeals) has rightly held that the services executed within the factory are in the nature of civil construction and should not be eligible for Cenvat Credit. Thus, he contended that there is no infirmity in the impugned order insofar as it has denied the Cenvat Credit to the appellant.

5. With regard to the limitation aspect, the learned AR submits that since the activities of the appellants regarding availment of irregular Cenvat Credit became known to the department through audit of books of accounts, the date of such knowledge should be considered for the purpose of initiation of the show-cause proceedings. Thus, he contended that since within the normal period of acquiring the knowledge of wrong availment of credit, the show-cause notice was issued by the department; the same is not barred by limitation of time.

6. Heard both sides and perused the records.

7. The period of dispute involved in this case is from November 2012 to January 2015. Availment of Cenvat credit on the disputed services were reflected in the Cenvat credit register and the particulars were furnished in the periodic ER-1 returns filed before the jurisdictional Central Excise/ Service Tax Authorities. Such facts have also been accepted by the authorities below in the respective orders passed by them. Thus, it is evident that the department was aware regarding the fact of availment of Cenvat credit during the above period.

However, the show cause notice was issued to the appellant on 19.01.2016, which was beyond the normal period of one year from the date of availment of the Cenvat credit. The appellant in this case, had entertained the reasonable belief that the disputed services are confirming to the definition of input service and accordingly, availed the Cenvat credit. However, on pointing out the mistake regarding availment of regular credit by the audit wing, the appellant had reversed the Cenvat credit. The issue involved in this appeal for consideration by the Tribunal is, whether the extended period of limitation provided under Section 11A of the Central Excise Act, 1944 can be invoked for confirmation of the adjudged demands. I find that the ingredients viz., fraud, suppression, willful misstatement etc. contained in the said statutory provisions are not available in the present case inasmuch as availment of the credit particulars were duly reflected by the appellant in the statutory returns. Further, the department has also not brought on any material evidence to substantiate that the ingredients mentioned in Section 11A *ibid* are present in the case, for invoking the extended period of limitation. Thus, I am of the considered view that the show cause proceedings initiated by the department cannot be sustained on the ground of limitation. However, considering the submissions made by the appellant that it would not claim any benefit in respect of the amount paid towards the adjudged confirmed demands, it is ordered that the benefit of limitation should only be confined to any adjudged demands payable by the appellant.

8. In view of above, impugned order is set aside and the appeal is allowed in favour of the appellant on the ground of limitation.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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