**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**MUMBAI**

REGIONAL BENCH - COURT NO. 02

**Service Tax Appeal No.87084 of 2018**

(Arising out of Order-in-Appeal No.PK/18/ME/2018 dated 11/01/2018 passed by the Commissioner (Appeals-II), GST & Central Excise, Mumbai)

**Idea Cellular Ltd.** **.....Appellant**
10th Floor Birla Centurion
Century Mills Compound
Pandurang Budhkar Marg, Worli
Mummbai 400 030.

*VERSUS*

**Commissioner of CGST, Mumbai Central** **.....Respondent**
4th Floor, C.Ex. Building, Churchgate,
Mumbai - 400 020.

**Appearance:**

Shri Manoj Chauhan Chartered Accountant, for the Appellant
Shri Dilip Shinde, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO. A/88599/2018**

Date of Hearing: 31.08.2018
Date of Decision:31.08.2018

**PER : S.K. MOHANTY**

1. Brief facts of the case are that the appellant is engaged in providing various taxable services, defined under the Finance Act, 1994 and is accordingly, registered with the service tax department. During the period 2008-2009, the appellant had availed 100% Cenvat

Credit of Central Excise duty paid on the capital goods received in the said financial year, instead of 50% as specified under Rule 4 of the Cenvat Credit Rules, 2004. Such excess credit of 50% was adjusted in the subsequent year. Since taking of entire 100% credit was not in conformity with the statutory provisions, the department issued the show-cause notice on 19/04/2012, proposing for recovery of such irregular availment of credit. The matter was adjudicated against the appellant, in confirming the Cenvat demand along with interest and also imposing penalties. The learned Commissioner (Appeals) vide impugned order dated 17/01/2018 has upheld the adjudged demands confirmed by the original authority. Aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. The learned Consultant appearing for the appellant, at the outset, submits that show-cause proceedings initiated by the department are barred by limitation of time inasmuch as the period in dispute is 2008-2009, whereas the notice was issued on 19/04/2012, which is beyond the normal period prescribed under sub-section (1) of Section 73 of the Act. To substantiate such stand, the learned Consultant has referred to the show-cause notice dated 19/04/2012, wherein the proviso clause appended to sub-section (1) of Section 73 has not been invoked and also there was no specific allegation regarding indulgence of the appellant in the activities, concerning fraud, collusion, willful mis-statement, etc., in availment of excess Cenvat Credit. Thus, he submits that in absence of definite allegations regarding fulfillment of the ingredients mentioned in the proviso to Section 73 (1), the show-cause notice should have been issued within one year from the relevant date and since the same has been issued beyond such period, the proceedings are barred by limitation of time and accordingly, the adjudged demand cannot be confirmed against the appellant.

3. On the other hand, the learned DR appearing for the revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that the show-cause notice dated 19/04/2012 had not specifically alleged regarding involvement of the appellant in the activities of fraud, collusion, willful mis-statement in availing excess Cenvat Credit during the year 2008-09. Further, it has not been specifically alleged that the appellant had suppressed the fact regarding availment of 100% Cenvat Credit on the capital goods in the year of receipt. Thus, in absence of explicit allegation regarding fraudulent intention of the appellant in availing irregular Cenvat Credit, the show-cause notice should have been issued within the normal period, i.e. within one year from the relevant date. Admittedly, in this case, the show-cause notice was issued beyond the normal period of limitation provided in Section 73 (1) of the Act. Hence, the adjudged demand confirmed on the appellant cannot be sustained on the ground of limitation.

6. Therefore, I do not find any merits in the impugned order. Accordingly, by setting aside the same, the appeal of the appellant is allowed on the ground of limitation alone.

(Dictated and pronounced in the open court)

**(S. K. Mohanty)**
**Member (Judicial)**

***Sm***