CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 87086 of 2018

(Arising out of Order-in-Appeal No.PK/17/ME/2018 dated 11/01/2018 passed by the Commissioner (Appeals-II) GST & Central Excise, Mumbai)

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

VERSUS

Commissioner of CGST, Mumbai Central .....**Respondent**
4th Floor, C.Ex., Building, Churchgate,
Mumbai – 40020.

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/88600/2018

Date of Hearing: 31.08.2018
Date of Decision: 31.08.2018

PER : S.K. MOHANTY

Brief facts of the case are that during the period between October 2008 to March 2010, the appellant had availed excess Cenvat Credit of service tax paid on the input services, which were subsequently reversed in the Cenvat account. Where ever the excess availed Cenvat Credit was utilized for payment of service tax, the appellant while reversing the credit had also paid interest on such delayed reversal. However, the department insisted that the appellant should also pay interest amount on irregularly availed Cenvat credit, even if, such credit had not been utilized for payment of service tax. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order, in confirming the interest demand on delayed reversal of Cenvat Credit. Besides, penalty was also imposed on the appellant.

2. The learned Consultant appearing for the appellant, at the outset, submits that show-cause proceedings are barred by limitation of time inasmuch as the period in dispute is 2008-2010, whereas the notice was issued on 01.04.2013, 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 01.04.2013, wherein the proviso clause 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 of fraud, collusion, willful mis-statement, etc. in availment of excess Cenvat Credit. Thus, he submits that in the absence of 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 proposed demand cannot be confirmed on the ground of limitation.

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 show-cause notice dated 01.04.2013 had not specifically alleged regarding involvement of the appellant in the activities concerning fraud, collusion, willful mis-statement in availing excess Cenvat Credit during the year 2008-10. Further, it has not specifically been alleged that the appellant had suppressed the fact regarding availment of irregular Cenvat credit. Thus, in the absence of fraudulent intention in availing the 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.

6. Therefore, the adjudged demands confirmed on the appellant cannot be sustained on the ground of limitation. Accordingly, by setting aside the impugned order, 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)

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