

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86170 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/487/18-19 dated 12.02.2019 passed by the Commissioner of Central Excise & GST (Appeals), Nagpur)

M/s Excel Controlinkage Pvt. Ltd.

.... Appellant

W-67, 68B, W-69 & W-70, MIDC,
Hingna Road, Nagpur-440 016

Versus

**Commissioner of Central Excise &
GST, Nagpur-I**

.... Respondent

Post Box No.81, GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur-440001

Appearance:

Shri Mihir Mehta, Advocate for the Appellant

Shri Dilip Shinde, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85284 / 2022

Date of Hearing: 04.04.2022

Date of Decision: 04.04.2022

Per: S.K. Mohanty

This appeal is directed against the Order-in-Appeal No. NGP/EXCUS/000/APPL/487/18-19 dated 12.02.2019 passed by the Commissioner of Central Excise & GST (Appeals), Nagpur.

2. Brief facts of the case are that the appellant herein is registered with Service Tax Department for providing various taxable services defined under the Finance Act, 1994. During the disputed period, the appellant had provided the taxable

services to the overseas entity, which was considered as Export of Service in terms of Rule 6A of the Service Tax Rules, 1994. However, due to mistaken notion, the appellant had paid Service Tax on such export service provided by it under the Reverse Charge Mechanism (RCM) and availed CENVAT Credit of Service Tax amount paid by them. Taking of CENVAT Credit was disputed by the Department, as a result, the appellant had reversed the CENVAT Credit and also paid the interest amount for delayed reversal of the CENVAT credit. Based on audit objection, the Department initiated show cause proceedings against the appellant, seeking confirmation of Service Tax demand along with interest and for imposition of penalty. The matter arising out of the show cause notice dated 17.07.2018 was adjudicated vide order dated 28.11.2018, wherein the original authority had confirmed the Cenvat demand along with interest and also imposed equal amount of penalty under Section 78(1) of the Finance Act, 1994. On appeal against said adjudication order, the learned Commissioner (Appeals) vide impugned order dated 12.02.2019 has upheld the adjudication order passed by the original authority. Being aggrieved by the impugned order, the appellant has filed the present appeal before the Tribunal.

3. Learned Advocate appearing for the appellants submitted that the fact regarding availment of irregular CENVAT Credit was accepted by the appellant and accordingly, the CENVAT Credit was reversed by them and also the amount of interest was paid for such delayed reversal of credit. However, he contended that there is no element of

fraud, collusion, suppression etc. in the occasion of both availment and reversal of the CENVAT credit and thus, the provisions of Section 78 ibid cannot be invoked for imposition of equal amount of penalty. He further submitted that since the service tax amount in dispute was paid along with interest before issuance of show cause notice, benefit of sub-section (3) of Section 73 of Finance Act, 1994 should be available to the appellant.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. In this case, both taking of CENVAT Credit and reversal thereof was within the knowledge of the Department, which is evident from the audit objection report issued to the appellant. It is an admitted fact on record that both the Service Tax along with interest was deposited by the appellant in the year 2016 and thereafter, show-cause proceedings were initiated against the appellant on 17.07.2018. I find that both the adjudication as well as the first appellate authority have not specifically discussed with the issue of involvement of the appellant in the fraudulent activities, concerning fraud, collusion, suppression of facts etc., with intent to evade payment of Service Tax. Thus, in these circumstances, I am of the considered view that the proviso clause appended to

Section 78 *ibid* cannot be invoked in the case of the appellant for imposition of penalty.

7. Even otherwise also, the benefit provided under subsection (3) of Section 73 *ibid* should be available to the appellant inasmuch as before issuance of show-cause notice, the appellant had deposited the disputed amount of Service Tax along with interest and also informed the Department regarding such payment. Hence, as per the mandates under statute, no action was required to be taken for imposition of penalty. Hence, on this count also, appellant's case succeed on merit.

8. In view of the above, I do not find any merit in the impugned order, insofar as it has upheld the confirmation of penalty amount. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)