CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH

SERVICE TAX APPEAL No. 71131 OF 2018

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1995-17-18 dated 28 March, 2018 passed by the Commissioner (Appeals), Goods & Central Excise, Noida)

M/s Global Logic India Limited **.....Appellant**
Plot No. 07, Oxygen Business Park
Tower-A, GF to 5th Floor, Sector-144
NOIDA

Versus

Commissioner of Central Goods & Service Tax **.....Respondent**
C-56/42, Renu Tower, Sector-62
NOIDA

APPEARANCE:

Shri Rony Oommen John, Advocate, for the Appellant
Shri B.K. Jain, Authorised Representative of the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. 70113/2022

Date of Hearing: June 15, 2022
Date of Decision: July 04, 2022

JUSTICE DILIP GUPTA :

Global Logic India Ltd.[1] has filed this appeal to assail the order dated March 28, 2018 passed by the Commissioner (Appeals), Noida, by which the order dated March 14, 2017 passed by the Additional Commissioner has been upheld. The Additional Commissioner had disallowed CENVAT credit and ordered it to be recovered with interest and penalty. The

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1 the appellant

Additional Commissioner also confirmed the demand made for service tax with interest and penalty. The order passed by the Additional Commissioner is reproduced below:

> "**1.** (a) The Cenvat Credit amounting to Rs.66,36,774/-taken in the month of October' 13 for the period 2011 to June' 2013 is disallowed and ordered to be recovered under Rule 14 of Cenvat Credit Rules' 2004 read with proviso to Section 73(1) of the Finance Act, 1994.
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> (b) The Interest involved on the aforesaid amount should also be recovered from the party under rule 14 of CENVAT Credit Rules, 2004 read with provisions to Section-75 of Finance Act 1994.
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> (c) The Penalty of Rs.66,36,774/- under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section-78 of the Finance Act, 1994 is imposed upon the party for fraudulent availment of cenvat credit.
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> **2.** (a) The demand of Service Tax amounting to Rs.7,59,918/- is hereby confirmed under proviso to Section 73(1) of the Finance Act,1994. The party is directed to pay it forthwith.
>
> (b) The Interest involved on the aforesaid amount should also be recovered from the party under the provisions of Section-75 of Finance Act 1994.
>
> (c) The Penalty of Rs.7,59,918/- is also imposed upon the party under Section-78 of the Finance Act, 1994.
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> **3.** (a) The demand of Service Tax amounting to Rs.75,555/- is hereby confirmed under proviso to Section-73 of the Finance Act,1994. As Service Tax of Rs.75,555/- already stands deposited vide Challan no.1024,1313 & 1327 all dated 25.07.2014, the same is appropriated.
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> (b) The Interest amounting to Rs.7774/- involved on the aforesaid amount already stands deposited vide Challan no.1024, 1313 & 1327 all dated 25.07.2014, the same is appropriated.
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> (c) Penalty of Rs.75,555/- is also imposed on the party under Section 78 of the Finance Act, 1994.
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> **4.** (a) The Cenvat Credit amounting to Rs.18,62,067/- is disallowed. As the party has already debited the Cenvat amount of Rs.18,62,067/- vide Journal Voucher No. GL ING112015/20184 dated 01.07.2014 the same is appropriated under Rule 14 of

Cenvat Credit Rules, 2004 read with proviso to Section 73 of the Finance Act, 1994.

(b) The Interest involved on the aforesaid amount should also recovered from the party under Rule-14 of CENVAT Credit Rules, 2004 read with provisions to Section 75 of Finance Act 1994.

(c) The Penalty of Rs.18,62,067/- under Rule 15(3) of the CENVAT Credit Rules,2004 read with Section-73 of the Finance Act 1994 is imposed upon the party.

5. (a) The Cenvat Credit amounting to Rs.859239/- (Rs.708721/- + Rs.150518/-) is disallowed and ordered to be recovered under Rule 14 of Cenvat Credit Rules'2004 read with proviso to Section 73(1) of the Finance Act, 1994.

(b) The Interest involved on the aforesaid amount should also be recovered from the party under rule 14 of CENVAT Credit Rules, 2004 read with provisions to Section 75 of Finance Act, 1994.

(c) The Penalty of Rs.18,62,067/- under Rule 15(3) of the CENVAT Credit Rules, 2004 read with 1994. Section 78 of the Finance Act, 1994 is imposed upon the party.

The aforesaid amounts should be paid forthwith. The amounts already paid will be appropriated against the amounts adjudged as above. This Order is issued without prejudice to any other action that may be taken or proposed to be taken against the said persons or firms under the Finance Act, 1994, or any other law for the time being in force in the Republic of India."

2. It would be seen that this appeal has been filed against five heads of demand confirmed by the Additional Commissioner and upheld by the Commissioner (Appeals). These heads are as follows :

I.	Disallowance of CENVAT credit taken on service tax paid on input services received by the SEZ unit on the ground that SEZ unit could only have opted for exemption by way of refund of such service tax during the relevant period.	Oct 2011 to June 2013	**INR 66,36,774/-**
II.	Service tax liability under reverse-charge mechanism on rent-a-cab services	April 2013 to March 2014	**INR 7,59,918/-**

III	Penalty imposed under Section 73 (4A) of the Finance Act, 1994	April 2013 to March 2014	**INR 75,555/-**
IV	Penalty imposed under Rule 15 (3) of CENVAT Credit Rules read with Section 78 of the Finance Act, 1994 and Interest under Rule 14 of CENVAT Credit Rules read with Section 75 of the Finance Act, 1994	31.03.2014	**INR 18,62,067/-**
V	Recovery of amount of Cenvat credit taken on various input services along with interest	2013-14 & 2014-15	**INR 8,59,239/-**

3. Each of these heads would be taken up separately.

I

Disallowance of CENVAT credit taken on service tax paid on input services received by the SEZ unit.

4. During the relevant period, the appellant had availed and utilised the CENVAT credit of service tax paid on input services received in its Special Economic Zone[2] Unit. The appellant could also have claimed exemption by way of refund of the said service tax by virtue of Notifications dated 01.03.2011 and 20.06.2012, but it opted to take CENVAT credit of the same amount instead. The Additional Commissioner and the Commissioner (Appeals) have justified the disallowance of the CENVAT credit taken by the appellant on the sole ground that this benefit was not available before the issuance of the Notification dated 01.07.2013. It needs to be noted that this Notification contained an express provision in paragraph 5 that an SEZ Unit "shall have the option not to avail of this exemption and instead take CENVAT credit…"

5. The Department rejected the utilisation of CENVAT credit by the appellant on service tax paid on input services only on the

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2 SEZ

ground that the appellant should have claimed exemption of the tax amount by way of refund for the period prior to 01.07.2013. What needs to be noted is that the Department has not disputed that all the services utilized by the appellant were input services eligible for CENVAT credit.

6. A perusal of the Notifications dated 01.03.2011 and 20.06.2012 reveals that these Exemption Notifications have been issued under section 93(1) of the Finance Act, 1994[3] and conditional exemption has been made available only on the fulfilment of the specified conditions prescribed therein. The Notifications expressly recognize the option available to a SEZ unit to take CENVAT credit of the service tax paid on input services and there is no bar or prohibition prescribed against taking CENVAT credit of the service tax paid on input services. What, therefore, transpires is that when the option of taking the CENVAT credit is availed by an assessee, the benefit of exemption by way of refund will not be available to such an assessee and the Notifications themselves treat CENVAT credit as an alternative to refund mechanism.

7. It is for this reason that Shri Rony Oommen John, learned counsel for the appellant, submitted that the eligibility to take CENVAT credit on the service tax paid on input services received by the appellant cannot be denied on the basis of the two Exemption Notifications which were in force during the relevant period. Learned counsel pointed out that these Exemption Notifications provided SEZ units with an option to take refund of

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3 the Finance Act

the service tax paid on input services, while recognizing the fact that some SEZ units may instead opt to take CENVAT credit of the same amount and set it off against its respective output service tax liability. Further, as the Exemption Notifications specifically prescribe a condition that the SEZ unit should not have taken CENVAT credit if it wants to claim a refund, the Central Government recognized that an SEZ unit may take CENVAT credit as an alternative benefit to the refund and such taking of CENVAT credit is a legally permissible option under the CENVAT Credit Rules, 2004[4]. In support of this contention, learned Counsel placed reliance upon the judgment of the Delhi High Court in **Commissioner of Central Excise** vs. **Grand Card Industries**[5].

8. Shri B.K. Jain, learned authorized representative appearing for the Department, however, supported the impugned order and contended that an Exemption Notification should not be liberally construed and the beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In support of this contention, learned authorized representative placed reliance upon the judgment of the Supreme Court in **Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar** vs. **Commissioner of Central Excise and Service Tax, Alwar**[6].

9. The submission advanced by learned Counsel for the appellant has substance. The eligibility to take input tax credit as an alternative to an exemption under a notification has been settled by the Delhi High Court in **Grand Card Industries**. The

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4 the Credit Rules
5 2014 (305) ELT 19 (Del.)
6 2022 (LiveLaw) (SC) 203

issue that arose for consideration before the Delhi High Court was whether an option was available to an assessee to either avail the exemption or pay duty on the final product by taking MODVAT credit of inputs in terms of rule 57A of the Central Excise Rules, 1944. The High Court observed that in case a manufacturer is entitled to the benefit of both the MODVAT Scheme and an Exemption Notification, then the manufacturer should have the right to choose which of the two options would be more attractive and beneficial to him. The two provisions are in the alternative, but the right of choice is not curtailed. The portions of the judgment relevant to this appeal are as follows:

> **"18.** The stand of the Revenue that since the respondent was a SSI Unit and covered under the Notification No. 1/93 and clearance of goods up to a value of Rs. 30 lakhs was exempted from payment of duty, the benefit of Modvat scheme could not be availed in terms of Rule 57C is counter-productive and not beneficial for the respondent-assessee. It works against them and makes them in-competitive and places them at a disadvantage.
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> **19.** Thus, the stand of the Revenue is not sustainable. The object of the Modvat Scheme is to reduce cost of final product by taking credit for the duty paid on the inputs [Ichalkaranji Machine Centre (P) Ltd. (supra)]. The object of the exemption notification is to grant benefit to the SSI Units for clearing goods without payment of duty up to a particular limit.
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> **20.** Both the Modvat scheme and the exemption notifications are beneficial legislation. The beneficial notification have to be strictly initially but liberally interpreted.
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> **21.** If the interpretation of the Revenue is to be accepted that there was no choice to SSI Units to either avail the Modvat Scheme or the benefit of the exemption notification, then the SSI units are prejudiced and may even become unviable. The purpose of the Modvat Scheme is to prevent and neutralise cascading effect of the duty paid on inputs. If the interpretation of the Revenue is accepted then a manufacturer not registered as a SSI unit would be entitled to benefit of the Modvat scheme for unlimited value and pass on benefit to the purchaser. But an SSI unit covered by the exemption notification would not be entitled to the benefit of the Modvat scheme but would be entitled to clear goods at

nil duty or lesser duty only up to a limit. Because he cannot pass on the Modvat credit, to the purchaser, he is denied a level playing field and suffers disadvantage. This clearly is not the purpose behind the Modvat scheme and the exemption notification.

22. A manufacturer cannot simultaneously avail of double benefits one of the Modvat Scheme and the other of the exemption notification unless expressly permitted to do so. **In case a manufacturer is covered both under the Modvat scheme and an exemption notification, then the manufacturer should have the right to choose to avail the benefit of either of the two whichever is more** attractive and beneficial. The choice once exercised is binding and final and interchange may not be permissible, unless allowed but this is different to arguing that choice is not available. **The two provisions are in alternative but the right of choice is not curtailed.**

23. The Supreme Court of India in the case of Collector of Central Excise v. Indian Petro Chemicals - 1997 (11) SCC 318 = 1997 (92) E.L.T. 13 (S.C.) upheld the decision of the Tribunal wherein it was held that where two exemption notifications were applicable, the assessee had to take/avail of benefits of that notification which was more beneficial to it.

24. In the present case the manufacturers are admittedly covered both under the Modvat Scheme and the exemption notification, if the right to choose is not granted then it would be disadvantageous for a manufacturer to get itself registered as a SSI Unit. This would thus be to the detriment of the manufacturer to register as a SSI Unit. This consequence is clearly not intended by the legislature/Rule.

25. The respondents admittedly have not claimed or availed of any benefit under the exemption notification but have sought to claim benefit of only the Modvat scheme as was available to other manufacturers.

26. The respondents have only sought to forego the benefits of the exemption notification available to SSI Units.

27. The assessee in our view would have the option either to avail the exemption under the exemption notification or to pay duty on the final product by taking Modvat credit on inputs in terms of Rule 57A of the Rules."

(emphasis supplied)

10. The same view was taken by the Karnataka High Court in **Commissioner of Central Excise, Bangalore-II** vs. **Federal**

Mogul TPR India Ltd.[7] in the context of an Exemption Notification issued under section 93(1) of the Finance Act. The assessee had not taken the benefit of the Exemption Notification and had instead taken CENVAT credit of the tax paid inputs. The relevant portion of the judgment is reproduced below :

> "9. A bare reading of this notification denotes that this notification is issued under Section 93(1) of the Finance Act, 1994 which exempts the taxable services of production of goods on behalf of the principal manufacturer from the whole of service tax leviable under Section 66 of the Finance Act. However, this exemption notification is subject to the condition that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client, i.e., the principal manufacturer and goods so produced are returned back to the said client for use in or in relation to the manufacture of other goods on which appropriate duty of excise is payable.
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> 10. Thus, this notification is condition precedent. The applicability of this notification shall be subject to the condition stipulated therein, i.e., the principal manufacturer discharging the liability of appropriate duty of excise on these manufactured goods. Any job worker who undertakes services of processing is not free to avail the benefit of the said notification unless the recipient of the services pays appropriate duty of excise on the goods returned back by the job worker. This condition of payment of appropriate duty of excise by the recipient i.e., the principal manufacturer is sine qua non for availing the benefit of the notification by the job worker. Thus, the condition stipulated in the notification establishes that it is a conditional notification.
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> 11. Section 5A(1A) of the Central Excise Act provides for power to grant exemption from duty of excise. Section 5A(1A) of the Central Excise Act specifically provides that "for the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods".
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> 12. The words "shall not pay" enumerated in the said provision specifically denotes that it is the mandatory requirement on the manufacturer of such excisable goods not to pay the duty of excise on such goods in respect of which an exemption under Section 5A(1A) has been granted absolutely. Such a mandatory requirement of "not to pay" the duty of excise on goods exempted under sub-section (1) of Section 5(A) is not found in Section 93

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7 2016 (42) STR 427 (Kar.)

> of the Service Tax Act. Section 83 of the Service Tax Act provides for application of certain provisions of Central Excise Act, 1944 in relation to service tax under Finance Act, 1994. Absence of Section 5A of Central Excise Act, in Section 83 of the Finance Act, 1994, indicates that the provisions of Section 5A of Central Excise Act, is not applicable to the Finance Act, 1994.
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> 13. The contention urged on behalf of the Department that the FMGIL having wrongly paid service tax has consequently passed an inadmissible CENVAT credit amounting to Rs. 2,02,00,275/- to the principal manufacturer, i.e., FMTPR much against the exemption Notification No. 8 of 2005 is not worthy of acceptance. As we have already discussed, the Notification No. 8 of 2005 is a conditional notification and Section 5A(1A) of Central Excise Act, 1944, is not applicable to the present case."

11. In the present case also the Exemption Notifications dated 01.03.2011 and 30.06.2012, granted only conditional exemption from payment of service tax. The appellant could, therefore, forego such exemption and claim benefit of CENVAT credit on the same amount of service tax paid on input services as would have been available as refund to an SEZ Unit.

12. It is true that the Notification dated 10.07.2013, which superseded the earlier Exemption Notifications dated 01.03.2011 and 20.06.2012, contained similar provisions as in the earlier Notifications and also extended similar benefit by way of refund of the service tax paid on input services used for authorized operations of an SEZ Unit and that it also expressly clarified in paragraph 5 that an SEZ Unit shall have the option not to avail this exemption and instead take CENVAT credit on the specified services in accordance with the Credit Rules, but this Notification merely clarifies the position and would, therefore, be applicable retrospectively for the period when the appellant had taken the CENVAT credit of service tax paid on input services.

13. In this connection, reliance can be placed on the judgment of the Supreme Court in **Belarpur Sugar & Allied Indus. Ltd.** vs. **Collr. Of C.Ex., Aurangabad[8].** The issue involved was whether an assessee would be entitled to duty reduction available under an amending Notification before the date of issue of that Notification. The Supreme Court held that denial of the Exemption Notification for the period prior to the date of the amending Notification shall defeat the object and purpose of the Notification itself since the purpose of both the original and the amending Notifications was to give incentive for increasing production of goods which would be effectively served only if the amending Notification was made available to the prior period as well. The relevant portion of the judgment of the Supreme Court is reproduced below :

> "9. Before we proceed to scrutinise the Notifications, the law to interpret is settled. Unless there is anything to the contrary in the Act, Rules or Notification, if there be two possible interpretation, it is that interpretation which subserve the object and purpose should be accepted. The objective of this Notification is by conferring rebate in excise duty, an incentive is given to a factory for increasing the sugar production during the lean period. It is with this in mind now we proceed to scrutinize the two Notifications. The only question is, whether benefit under Notification 192, dated 11-6-1982 is to be understood only from the date on which this Notification came into force or for the entire period preceding that date which is conferred under Notification No. 132. We find significantly the language used in the second Notification is "For para 4, following paragraph shall be substituted". It is significant while substituting this paragraph 4 on the 11th June, 1982, it admits to confer rebate for the period preceding the date of this Notification viz. from May. So this Notification clearly indicates to confer benefit which is covered by the first Notification No. 132. If the interpretation as sought by the Revenue is to be accepted the preceding period has to be excluded.

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8 1999 (108) ELT 9 (SC)

> Substituted para 4 has two parts, first `where production during three preceding year was nil' and second part, `the entire production during May to September, 1982 will be exempted.' Appellant case is covered under both parts. Its production in the last three preceding years was nil and in terms of Notification 132 read with this substituted para 4, in terms of 2nd part the entire sugar produced during May to September, 1982 would exempt. Thus the interpretation for revenue cannot be accepted as it defeats the very object of the Notification."

14. Reliance placed by learned authorized representative on the judgment of the Supreme Court in **Krishi Upaj Mandi Samiti** is misplaced. Paragraph 8 of the judgment on which reliance has been placed as reproduced below:

> "8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication"

15. In the present case, the appellant is not claiming the benefit of the Exemption Notification, but is claiming CENVAT credit on the service tax paid on input service received by the appellant.

16. In this view of the matter, the finding recorded by the Commissioner (Appeals) disallowing CENVAT credit taken on service tax paid on input services received by the SEZ unit on the ground that the SEZ Unit could only have opted for exemption by way of refund of such service tax cannot be sustained.

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Service tax liability under reverse-charge mechanism on rent-a-cab services

17. The Order has confirmed the demand of Rs. 7,59,918/- of service tax with interest and penalty upon the appellant on the ground that the appellant had recovered expenses incurred on

rent-a-cab services from its customers, but had not paid service tax on a reverse-charge mechanism on these services.

20. It transpires from the records that a letter dated 14.10.2014 was issued by the Superintendent, Service Tax Range-1, Noida to the appellant alleging that the scrutiny of records submitted by the appellant showed that the appellant had recovered expenses amounting to Rs. 1,72,70,301/- from its customers towards rent-a-cab services and for this allegation reliance was placed on a chart. In this chart titled “Details of Hire of Vehicle expense for FY’14, the appellant showed relevant ledger line items for the expenses incurred during the year to be Rs. 3,44,67,299/- and the abated value @40% had also been duly disclosed in the service tax returns for the year 2013-14. The Superintendent, however, referred to certain ledger items mentioned in the chart. One of those entries was named “Recovery of expenses” for an amount of Rs. 1,72,70,301/-. The Superintendent surmised that this entry pertained to expenses incurred on rent-a-cab services by the appellant, which were eventually recovered from its customers and that no service tax had been discharged on the same. It was explained by the appellant in its reply dated 12.12.2014 that there was actually no recovery of expenses from the customers and that the amount of Rs. 1,72,70,301/- indicated in the chart was only a re-classification of expenditure in the books of account of the appellant. The appellant pointed out that the expenses relating to rent-a-cab services were initially accounted in the ledger named "211402 STF-WEL HIRE OF VEHICLES" and later transferred to the relevant heads of expenses by way of re-classification. According

to the appellant, this re-classification of expenses has no bearing on the total value of rent-a-cab services which had been correctly computed and duly offered to tax by the appellant, as would be evident from the Service Tax returns filed by the appellant for the period April to September 2013 and October 2013 to March 2014.

21. From the Service Tax returns filed by the appellant for the year 2013-14, the following is derived:

Period	Value of taxable services (Rent-a-cab scheme operator service)	Service Tax payable as Service Receiver	Education Cess	Secondary and Higher Education Cess	Total Payment
April 2013 to September 2013	64,99,222/-	7,79,906/-	15,598/-	7800/-	8,03,304/-
October 2013 to March 2014	72,87,700/-	8,74,523/-	17,490/-	8,745/-	9,00,758/-
	1,37,86,922/-	16,54,429/-	33,088/-	16,545/-	17,04,062/-

22. It needs to be noted that the total value of taxable services indicated in the chart submitted by the appellant to the Audit team was Rs. 3,44,67,299/-, and 40% of this amount for the purpose of abatement is Rs. 1,37,86,920/-, which is the amount on which the appellant had paid the applicable service tax.

23. It is, therefore, clear that additional demand of service tax is claimed on the amount on which service tax has already been paid by the appellant. This demand has been computed by wrongly interpreting an internal ledger item. The Commissioner (Appeals) failed to appreciate this factual position.

24. The demand made under this head, therefore, cannot be sustained.

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Penalty imposed under section 73(4A) of the Finance Act

25. This demand was confirmed against the appellant on the ground that the appellant had received services from outside India and was liable to pay service tax of Rs. 75,555/- under the reverse charge mechanism. This amount was originally not reflected in the service tax returns, and had been paid belatedly by the appellant with interest of Rs. 7,774/- on 25.07.2014, much prior to the issuance of the show cause notice dated 31.03.2016. Despite the payment of the service tax with interest, the Department raised a demand of Rs. 75,555/- with penalty under section 73(4A) of the Finance Act.

26. It is pertinent to note that the case of the appellant is squarely covered by the provisions of sub-section (3) of Section 73 of the Finance Act, 1994 read with Explanation 2 thereto. These provisions, as they then stood, are reproduced below:

> "**73.** Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.
> (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:
> **Explanation 2.** – For the removal of doubts, it is hereby declared that no penalty under any of the provisions of

this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon."

27. Section 73(4A) and the Explanation to Section 73 of the Finance Act provide that no penalty shall be imposed if the assessee has paid the amount of service tax along with interest before the service of the show cause notice, whether on the basis of his own ascertainment or on the basis of ascertainment by the Department.

28. The demand of penalty under section 73(4A) of the Finance Act is, therefore, without any basis and the confirmation deserves to be set aside.

IV

Penalty imposed under rule 15(3) of the Credit Rules and interest under rule 14 of the Credit Rules

29. The factual position with respect to the aforesaid demand is as under:

(a) On 31.03.2014, the appellant took CENVAT credit of input tax on the strength of an invoice dated 31.03.2014 raised by M/s IP Unity Communications Ltd.;

(b) The appellant had not made the payment in respect of this invoice dated 31.03.2014 till it accepted this mistake and reversed the CENVAT credit taken by voucher dated 01.07.2014. This reversal was done three months from the date of the invoice;

(c) The Delhi High Court granted sanction to the Scheme of Amalgamation of the Appellant and M/s IP Unity Communications Ltd. with effect from 01.04.2014 by order dated 25.05.2015 in Company Petition No. 608/2014;

(d) The show cause notice contained demands of interest under rule 14 of the Credit Rules read with section 75 of the Finance Act and penalty under rule 15 (3) of the Credit Rules read with section 78 of the Finance Act;

(e) No specific allegation of fraud, collusion, wilful mis-statement, suppression of facts or intent to evade payment of service tax had been raised in the show cause notice; and

(f) Specific submissions had been raised by the appellant that its case was covered by the provisions of rule 4 (7) of the Credit Rules, 2004.

30. Learned counsel for the appellant had submitted that in such circumstances taking CENVAT credit and reversing the same is permissible under rule 4 (7) of the Credit Rules. This rule is reproduced below:

"4. Conditions for allowing CENVAT credit.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in Rule 9 is received:

Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:

Provided further that in case the payment of the value of input service and the service tax paid or

> payable as indicated in the invoice, bill or as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:"

31. It is not disputed by the Department that the appellant had reversed the CENVAT credit wrongly taken by the appellant through voucher dated 01.07.2014, and this fact is reflected in the show cause notice. It cannot also be disputed three months from the date of the invoice would expire on 01.0.2014. The appellant had, therefore, complied with the provisions of rule 4 (7) of the Credit Rules.

32. Thus, when rule 4 (7) of the Credit Rules has been complied with, there is no question of any delay warranting payment of interest by the appellant under rule 14 of the Credit Rules.

33. Similarly, the provisions of rule 15 (3) of the Credit Rules have no application for two reasons. The first is that there is no wrongful taking or utilisation of credit by the appellant, and secondly there is no allegation raised or material relied upon with respect to fraud, collusion, wilful mis-statement, suppression of facts or intent to evade payment of service tax on the part of the appellant.

34. Thus, the demand of interest and penalty on the CENVAT credit taken and later reversed by the appellant in accordance with the provisions of rule 4 (7) of the Credit Rules could not have been confirmed.

V

Recovery of amount of CENVAT credit taken on various input services along with interest

35. During the course of the audit conducted by the Department for the year 2013-14, the CENVAT credit taken by the appellant on various input services were disputed on the ground that these were **"inadmissible input services"**.

36. The appellant categorized the input services which were considered to be inadmissible by the Department separately and the admissibility of each category was explained therein. A table was also presented by the appellant in the reply dated 12.12.2014 to the audit objections and the reply dated 05.07.2016 to the show cause notice.

37. The disallowance of CENVAT credit appears to be in respect of five input services namely, **Management or Business Consultant services** (Rs. 4,66,254/-), **Maintenance or repair services** (Rs. 1,92,323,/-), **Courier services** (Rs. 19,176/-), **Storage and warehouse services** (Rs. 16,329/-) and **Technical Testing and Analysis services** (Rs. 2,853/-).

38. Learned counsel for the appellant pointed out how the five input services were used in provision of Information Technology services to the customers and also demonstrated the nexus between the input services and the output service. Learned

counsel also pointed out that the definition of "input service" in rule 2 (l) of the Credit Rules, as applicable for the relevant period, is an inclusive definition, and that none of the five input services utilised by the appellant fell within any of the exceptions in this rule. Learned counsel also placed reliance upon the judgment of the Supreme Court in **Ramala Sahkari Chini Mills Ltd.** vs. **Commissioner Of Central Excise, Meerut-I**[9] in support of the proposition that the word "includes" must be interpreted to enlarge the meaning of the preceding words by way of extension and not with restriction. Learned counsel pointed out that these submissions were not only made in reply to the show cause notice but were also made before the Commissioner (Appeals) but they have not been considered.

39. The Order-in-Original or the Order-in-Appeal have not considered the submissions made by the appellant and in fact merely reproduce the words of the audit letter dated 14.10.2014 and the show cause notice dated 31.03.2016. There is no mention of the nature of the input services on which credit has been disallowed, nor any reason has been given why these services do not have a nexus with the output service of the appellant.

40. This issue would, therefore, have to be remitted to the Commissioner (Appeals) to decide the same in the light of the reply submitted by the appellant.

41. Thus, the confirmation of demands under heads I, II, III and IV are set aside. However, the demand under head V is remitted to the Commissioner (Appeals) for taking a fresh decision after

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taking into consideration the reply filed by the appellant on this issue. The appeal is, accordingly, allowed to the extent indicated above.

(Pronounced in the open Court on **04.07.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(RAJU)
MEMBER (TECHNICAL)

Golay/Shreya