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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
20.
+ **CEAC 3/2016**

INDIAN VISIT PRIVATE LIMITED ..... Petitioner
Through: Mr. Rupesh Kumar, Mr. Jitin Singhal and Mr. Pravesh Bahuguna, Advocates.

versus

COMMISSIONER OF SERVICE TAX, DELHI-I ..... Respondent
Through: Mr. Satish Kumar, Senior Standing counsel with Mr. Agrim Bhasin, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **08.02.2016**

CM No. 4749/2016 (for condonation of delay in filing the appeal)

1. For the reasons stated in the application, the delay in filing the appeal is condoned.

2. The application is disposed of.

CEAC 3/2016 & CM No. 4678/2016 (for stay)

3. A show cause notice was issued to the Appellant Assessee on 7th April 2006 asking him to show cause why an amount of Rs. 63,202 Central Value Added Tax ('CENVAT') credit wrongly taken should not be disallowed and

recovered in terms of Rule 14 of the CENVAT Credit Rules, 2004 along with interest and why penalty should not be imposed. The above show cause notice was issued on scrutiny of the returns filed by the Assessee in Form ST-3 in which, according to the Department, the Assessee had taken excess CENVAT credit in respect of non-taxable services and failed to pay service tax of Rs.63,202.

4. In the order dated 31st August 2010, the Assistant Commissioner noted that in terms of the Rule 6 of the CENVAT Credit Rules, 2004 the Assessee had an option to maintain separate accounts for the taxable and non-taxable services and demonstrate that the CENVAT credit was being claimed only in respect of input services which were intended for use in providing output services on which service tax is payable. The second condition was that the credit would be availed only to an extent of 20% of the amount of tax payable on taxable services. The Assistant Commissioner returned a finding confirming the shortage of service tax paid to the extent of Rs.63,202 in terms of Section 73 of the Finance Act, 1994 and imposed a penalty of the same amount at the rate of Rs.100 per day for every day during which such failure continued.

5. Aggrieved by the said order, the Assessee went in appeal before the Commissioner (Appeals) who by an order dated 19th August 2012 dismissed it on the ground of failure by the Appellant to seek waiver of pre-deposit and also not deposit the disputed amount of service tax and penalty. When the matter was remanded to the Commissioner (Appeals) for a second round of adjudication, an order dated 21st June 2013 was passed once again dismissing the appeal, this time on merits. In short, the Commissioner (Appeals) held since the Appellants were maintaining separate accounts "they should not have utilized the CENVAT Credit on those inputs services which were used for providing non-taxable output services." Further there was a condition of restricting the CENVAT credit to 20% as per the provisions of Rule 6 of the CENVAT Credit Rules, 2004.

6. Against the above order of the Commissioner (Appeals), the Assessee went in appeal before the CESTAT which has by the impugned order dated 13th October 2014 dismissed the appeal of the Assessee and also affirmed the penalty.

7. The Assessee filed an application seeking rectification of the above order on the ground that the CESTAT had not discussed the merits of the case.

This application was dismissed by the CESTAT by the second impugned order dated 28th July 2015.

8. Having heard learned counsel for the parties, the Court is of the view that no substantial question of law arises in the present appeal against the impugned order of the CESTAT which has concurred with the finding of both the Assistant Commissioner and the Commissioner (Appeals). Learned counsel for the Appellant took the Court through a tabulated chart which purports to show the bifurcation between the taxable and non-taxable services. However from this document it is not clear that claim of the Appellant for CENVAT credit was restricted only to taxable services. On the other hand, the Appellant admits that it used CENVAT credit even in respect of taxable services including payment made to the Chartered Accountant. the Appellant has been unable to persuade the Court to interfere with the concurrent factual finding of the Assistant Commissioner, Commissioner (Appeals) as well as the CESTAT.

9. As far as the penalty is concerned, the minimum penalty, as mandated by Section 76 of the Finance Act as it stood at the relevant time, has been imposed. This also does not call for any interference.

10. The appeal and the application are accordingly dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 08, 2016

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