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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 149 of 2018

The Principal Commissioner CGST And Central Excise GST Bhavan Dhamtari Raod, Tikrapara, Raipur, District- Raipur, Chhattisgarh.

---- Appellant

Versus

M/s Spectrum Coal And Power Limited 7th Floor, Corporate Tower Ambience Mall, Nh-8, Gurgaon, Haryana.

---- Respondent

For Appellant	: Shri Maneesh Sharma, Advocate.
For Respondent	: None.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P. R. Ramachandra Menon, Chief Justice

13.08.2019

1. The Appellant-Revenue is before this Court challenging Annexure A/1 order dated 26.04.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, West Block No.2, R.K. Puram, New Delhi-110066, Customs Appeal Branch (hereinafter referred to as 'CESTAT') mainly contending that the scope of the statutory provisions for granting the relief with regard to the excess payment has not been averted to and discussed anywhere in the said order dated 26.04.2018.

2. We heard the learned Standing Counsel representing the Appellant-Revenue. Despite the completion of service of notice, nobody has appeared on behalf of the Respondent.

3. We have perused the entire material on record. The facts and figures are as follow:

The Respondent is a registered establishment with regard to satisfaction of service tax, particularly, under the category of 'mining service' and 'goods transport agency service'. In the course of audit of books of accounts of the Respondent for the period from 2006 to 2011, the authorities concerned came to note that the Respondent was not making prompt payment of service tax as reflected in their returns and that there was a short payment to an extent of Rs.12,25,27.434/- (including cess). In the said circumstance, Annexure A/2, show-cause notice was issued on 18.04.2012, demanding satisfaction of the shortfall and proposing recovery of the said amount with further consequences mentioned therein. On receipt of the said notice, the assessee filed a reply and after considering the same, the competent authority finalized the adjudication proceedings as per Annexure A/3 order passed on 14.05.2013, for realisation of the deficit amount with interest and penalty under the relevant provisions of the statute.

4. Met with the situation, the Respondent took up the matter by way of appeal before the CESTAT. During the course of hearing before the Tribunal, it was stated by the Department that the adjudicating authority had finalized the proceeding on the basis of facts and figures as well as relevant provisions of law. However, allegedly without any specific reference to the statutory requirements to avail or extend the benefit in relation to the excess payment, the order passed by the adjudicating authority was set aside and the matter was remitted, directing the adjudicating authority to

allow adjustment and finalise the matter. By virtue of the said course pursued by the Tribunal, it is considered that unlawful gains have been resulted to the Respondent and that it was very much necessary for the Tribunal to have ensured whether the legal prescriptions for granting the relief, giving positive directions, were satisfied or not, which unfortunately has not been done. Hence, the challenge.

5. The learned counsel for the Appellant-Revenue submits that the adjustment to the excess payment has been envisaged under Rule 6(4A) of the Service Tax Rules, 1994 can be considered and benefit can be given, only satisfaction of the conditions specified under Section 6(4B) of the Service Tax Rules, 1994. The said provisions are extracted below :

> “**Rule** [**6. Payment of service tax.** ----
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> x x x x
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> x x x x
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> [(4) Where an assessee is, for any reason, unable to correctly estimate, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central

Excise (No.2) Rules, 2001,relating to provisional assessment, except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.]

[(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid y him against his service tax liability for the succeeding month or quarter, as the case may be.

[(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely

(i) the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,

(ii) excess amount paid by an assessee registered under sub-rule (2) of rule (4), on account of delayed receipt of details of payment towards taxable services may be adjusted without monetary limit,

(iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of (one lakh rupees) for a relevant month or quarter as the case may be,

(iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise

> within period of fifteen days from the date of such adjustment."

6. On going through the order under challenge, it is seen that the departmental representative had appeared before Tribunal as noted in paragraph-4 of the order under challenge, and submitted that the adjudicating authority had recorded that the adjustment between excess and short payment cannot be done since the procedure prescribed in this regard in the statute has not been complied with by the assessee. The relief granted by the Tribunal is based on the reasoning given in paragraphs-6 & 7, which are extracted below :

> "6. From the month wise chart placed on record on behalf of the appellant, which also finds place in the relevant show cause notice, we note that if the entire period of dispute is taken into consideration, after adjustment of excess and short paid Service Tax, the net amount appears to be an excess payment. Accordingly, we are of the view that taking into account only the short paid Service Tax in a few months the demand raised is not justifiable.
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> 7. It is settled position of law that substantial benefit cannot be denied for failure to comply with certain procedural conditions. In principle there can be no objection to the adjustment of Service Tax short paid and excess paid. However, the same needs to be supported by a verification of the relevant records regarding payment of Service Tax. For facilitating such an exercise we set aside the impugned order and remand the matter to the Adjudicating Authority for allowing

> such adjustment and finalize the matter of demand, if any. The appellant will be at liberty to substantiate their claim that excess Service Tax has been paid by submission of supporting documents certified by the Chartered Account of the appellant."

7. From the above, it is seen that without specifically mentioning or referring to the relevant conditions for granting the benefit of adjustment in respect of the excess payment, the Tribunal simply observed that failure to comply with certain procedural conditions cannot be a ground to deny substantial benefit and that in principle, there can be no objection to the adjustment of service tax short paid and excess paid. But here again, it is to be noted that the said finding and reasoning were given by the Tribunal with reference to "some chart" prepared by the Appellant there, who is Respondent herein, as to the remittances revealing the excess payment. It is also evident from paragraph-3 of the order that, such a 'chart' was not forming part of the proceedings before the adjudicating authority and that the said 'chart' prepared on behalf of the assessee was produced by the learned counsel for the Respondent before the Tribunal with reference to the period of dispute, the payment affected to the tune of Rs.1 crore 77 lacs and such other aspects.

8. We find considerable force in the submissions made by the learned counsel for the Appellant-Revenue to the effect that since the remedy provided against the order of the Tribunal is only under limited circumstances as envisaged under Section 35G of the Central Excise Act, 1944, it was quite necessary for the Tribunal to have considered and discussed the relevant provisions of law, to sustain the order, which

unfortunately is lacking in the instant case. More so, despite completion of service of notice to the Respondent, who was Appellant before the Tribunal has not chosen to appear before this Court, to put forth their version with regard to the sequence of events, the facts and figures and the relevant provisions of law.

9. In the said circumstances, the substantial question of law suggested by the learned counsel for the Appellant-Revenue and raised, as taken note of by this Court in the order dated 16.01.2019, is answered in favour of the Revenue. We set aside Annexure A/1 order dated 26.04.2018 and remit the matter for fresh consideration by the Tribunal after hearing both the sides.

10. The appeal is allowed to the said extent. No cost.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu