

OD-3

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/8/2024
IA NO: GA/2/2024

COMMISSIONER OF CENTRAL EXCISE BOLPUR COMMISSIONERATE
VS
M/S. EMTA COAL LTD

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26th April, 2024

Appearance :
Mr. K. K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...for appellant

Dr. Samir Chakraborty, Adv.
Mr. Abhijit Biswas, Adv.
Mr. B. Sengupta, Adv.
...for respondent

The Court : This appeal filed by the revenue is directed against the order dated 30th May, 2023 passed by the Customs, Central Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal), in Excise Appeal No. 169 of 2011.

The revenue has suggested the following substantial questions of law for consideration :

- i) Whether the revised returns filed on 14.08.2009 under Rule 7B of the Service Tax Rules, 1994 can be considered as within time in terms of Rule 7 of the Service Tax Rules, 1994 ?
- ii) Whether the Learned Tribunal has committed the gross error by not appreciating that the revised return was filed on 14.08.2003 which is beyond the stipulated period and as such the taxable value mentioned in original ST-3 returns is to be considered as correct or not ?

We have heard Mr. K. K. Maiti, learned standing Counsel, assisted by Mr. Tapan Bhanja, learned Advocate appearing for the appellant and Dr. Samir Chakraborty, learned Senior Counsel for the respondent/assessee.

The appellant/department issued show cause notice dated 21st September, 2010 calling upon the respondent/assessee to show cause as to why the inadmissible Cenvat credit as special additional duty taken on capital goods shall not be recovered from them under Rule 14 of the Cenvat Credit Rules, 2004, read with the proviso to Section 73(1) of the Finance Act, 1994; interest on the inadmissible credit should not be charged under Rule 14 of the Rules read with Section 75 of the Act; why penalty should not be imposed; on account of revised STP return for the period ending March, 2009 submitted by them will not be treated as rejected for contravention of the provisions of Rule 7B of the Service Tax Rules and why penalty shall not be imposed in terms of Section 77 of the Act. The assessee submitted their reply after which an opportunity of personal hearing was granted to the authorized representative of the assessee.

The Commissioner of Central Excise, Bolpur passed the Order-in-Original dated 10th February, 2011 confirming the demand of Rs.4,35,40,758/- in terms of Section 73(2) and dropped the rest of the demand of Rs.95,02,132/-; imposed interest on the confirmed demand and also imposed equal amount of penalty.

Aggrieved by the same, the assessee filed appeal before the learned Tribunal. In the form of appeal filed before the learned Tribunal, the assessee had stated that the duty amount of Rs.4,35,40,758/- has been reversed/paid along with interest of Rs.64,08,168/- in August, 2009 and for the balance amount of interest and penalty, an application for dispensing with the requirement of pre-deposit thereof and for stay of the operation of the Order-in-Original had been filed along with the appeal petition. Learned Tribunal has taken note of the factual position and set out the submissions made by either parties and while allowing the appeal, the learned Tribunal has referred to paragraph 4.6 of the Order-in-Original and came to the conclusion that it is evident from the records that the assessee has already reversed the Cenvat credit along with interest which is recorded by the adjudicating authority and therefore proceedings against the assessee was not required. Further, it was held that only issue in the show cause notice is the reversal of inadmissible Cenvat credit and therefore the issue of figure shown in the revised return of taxable service is less or more is not the issue before the Tribunal. As it was apparently clear that the assessee had already reversed the Cenvat credit along with interest, the order of adjudication was held to be not sustainable and

accordingly the same was set aside. Aggrieved by such order passed by the learned Tribunal, revenue has preferred the present appeal.

Firstly, we need to point out that the entire matter revolves on the allegations of facts and there appears to be no question of law, much less substantial question of law arising for consideration. Nonetheless, since the learned Advocates of the parties had advanced the arguments touching upon the facts, we may refer to the same to come to the conclusion as to what is the nature of order to be passed in this appeal. The first aspect is whether the revised return was barred by time. The ST-3 return was filed by the assessee on 22nd May, 2009 and the revised return was filed on 14th August, 2009 and if the said date is taken, revised return was well within time. However, the stand of the Department that the due date for filing the return was 25th April, 2009 and the revised return filed on 14th August, 2009 was beyond the period of 90 days and therefore barred by time. The question would be as to whether the ST-3 return which was submitted on 22nd May, 2009 could have been rejected. In terms of Rule 7 of the Service Tax Rules, 1994(Rules) which deals with Returns, in terms of Sub-rule (1) therein, however, the assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, for the months covered in the half-yearly return. Sub-rule (2) states that, every assessee shall submit the half-yearly return by the 25th of the month the following the particular half-year. Rule 7B deals with refund of return. It states that an assessee may submit a revised return in Form ST-3 to correct a mistake or omission within a period of 90 days from the date of

submission of return under Rule 7. The cases where the Returns are not submitted within 90 days are dealt with in Rule 7(3), which stipulates that where the return prescribed under Rule 7B is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government a certain sum of money which is stipulated under said Rule considering the period of time. Therefore, the ST-3 return which was filed by the assessee on 22nd May, 2009 cannot be ignored by the department and the last date for filing the revised Return ought to be calculated from the said date and if the same is done, revised Return filed on 14th August, 2009 is well within time.

One more factor, which we need to take note of, is there is an earlier show cause notice issued to the assessee dated 8th April, 2010. The said show cause notice is one of the relied upon documents in the show cause notice dated 21st September, 2010, which is the subject matter of this case. Based on an audit report, it was pointed out that the assessee has himself interpreted Rule 3 and 4 of the Rules. This was taken into consideration by the assessee and the assessee rectified the mistake, reversed the credit which was availed and also paid the interest at the applicable rate. The aspect clearly brought out by the assessee in their response to the show cause notice vide a reply dated 27th October, 2010. This fact remains undisputed and if this is taken into consideration, the contention of the assessee that the second show cause notice issued on the same set of facts which was very much available with the department when the show cause notice dated 8th April, 2010 was issued, would be a sufficient ground

to hold that the show cause notice issued which was ultimately culminated in the Order-in-Original dated 10th February, 2011 could be held to be barred by time.

It is the submission of the learned standing Counsel for the appellant that this issue was not adjudicated by the learned Tribunal. It is not clear as to whether in paragraph 4 of the impugned order has recorded the submissions of the revenue stating that the revised return was filed by the assessee and the value of the taxable service was shown less.

Thus, considering the facts and circumstances of the case, we hold that the learned Tribunal has taken note of the undisputed facts that too from the order-in-original as passed by the adjudicating authority and granted relief to the assessee.

Thus, we find no questions of law, much less substantial question of law, arising for consideration in this appeal.

The appeal is thus dismissed.

The stay application IA No: GA/2/2024 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)