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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/51/2024
IA NO: GA/1/2024, GA/2/2024
COMMISSIONER OF SERVICE TAX, KOLKATA, Presently Known as
COMMISSIONER OF CGST & CX. KOLKATA NORTH COMMISSIONERATE

VS.

INDIAN BANK (Formerly known as Allahabad Bank, Kolkata)

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd January, 2025

Appearance :
Mr. Uday Shankar Bhattacharya, Adv.
Ms. Ekta Sinha, Adv.
…for appellant
Ms. Swapna Das, Adv.
Mr. Siva Kumar G., Adv.
…for respondent

The Court : There is a delay of 366 days in preferring the instant appeal. As we are required to see whether any substantial question of law arises for consideration, we exercise discretion and condone the delay in filing the appeal. The condone delay petition (GA/1/2024) is allowed.

The instant appeal has been filed by the revenue under Section 83 of the Finance Act, 1994 (the Act) challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Branch, Kolkata (Tribunal) in Service Tax Appeal No.282 of 2011, dated 13th March, 2023. The respondent/assessee has been shown as Allahabad Bank. The Central Government after consultation with the Reserve Bank of India framed the amalgamation of Allahabad Bank into Indian Bank Scheme 2020 and a notification to such effect was published in the Gazette of India on March 4, 2020. Therefore, the cause title in this appeal be amended and in the place of Allahabad Bank, 2, Netaji Subhas Road, Kolkata – 700001, it shall be substituted as "Indian Bank (formerly known as Allahabad Bank, Kolkata, having its corporate office at 254-260, Avvai Shanmugam Salai, Royapettah, Chennai – 600014 and local office at 2, Netaji Subhas Road, Kolkata-700 001"). The registry is directed to make necessary correction in the cause title.

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

"i) Whether the Ld. Tribunal erred in not considering the fact that the respondent had never taken registration under Rule 3 of Service Tax (Registration of Special Category of persons), 2005 and as such disputed its own observation that the respondent is an Input service distributor?

ii) Whether the Learned Tribunal erred in not considering the fact that the respondent have taken credit on the basis of internal statements which is not a valid document for taking credit under Rule 9(I) of the Cenvat Credit Rules, 2004?"

We have heard Mr. Uday Shankar Bhattacharyya, learned senior standing Counsel, assisted by Ms. Ekta Sinha, learned Advocate appearing for the appellant/revenue and Ms. Swapna Das, learned Advocate for the respondent/assessee.

The revenue was aggrieved by the order passed by the adjudicating authority dropping the proposal in the show-cause notice which was issued to the respondent bank after considering the reply given by the respondent. The learned Tribunal has elaborately examined the factual position and concurred with the decision taken by the adjudicating authority in dropping the proposal in the show cause notice. It was factually found that the allegation in the draft show cause notice that the assessee had taken Cenvat credit on the basis of internal statements called D-2 furnished by their different zonal officials on the basis of estimation was found to be not credible. Furthermore, the adjudicating authority found that there is no need to dispute input service credit and therefore, there cannot be any requirement to take registration as "Input Service Distributor". More importantly, the Tribunal noted that the bank is a nationalized bank and a Government of India Undertaking and therefore, there cannot be any malafide intention to evade payment of duty. Moreover, the respondent bank is registered with the Service tax Department and is paying service tax on the various services provided by them. They have always paid the taxes as and when applicable on time and all the returns have been filed on time and all the activities are known to the department and in the draft show cause notice it is no where mentioned that the assessee has ever defaulted in the past or is a regular defaulter in respect of the payment of service tax on the services provided by them. Furthermore, the Tribunal found that the Superintendent, Service Tax having jurisdiction over the respondent/assessee has categorically stated that since the credit is availed by the Braches and Regional offices based on invoices provided by service provider, there is no irregular availment of CENVAT credit. Furthermore, the Tribunal noted that there were audit conducted in the past and the audit team scrutinized the records of the bank and the department was fully aware of the bank's activities. Furthermore, the Tribunal faulted the contention of the department that penalty has to be imposed under Section 78 of the Act. Noting the said provision, the Tribunal found that there was no allegation of any non-levy or non-payment or short-levy or short-payment and/or erroneous refund of service tax and none of the activities of the respondent/assessee is hit by any of the clauses (a) to (e) of Section 78 of the Act. Thus, on facts the Tribunal was satisfied that the finding rendered by the adjudicating authority was categorical and the same does not call for interference.

Thus, the matter being entirely factual, we are of the view that there is no question of law, much less substantial questions of law, arises for consideration and hence, the appeal fails and is dismissed.

Consequently, the stay application GA/2/2024 is dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)