

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75602 of 2016

(Arising out of Order-in-Appeal No. 45/ST-II/KOL/2016 dated 16.02.2016 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. TIL Limited

1, Taratala Road, Garden Reach,
Kolkata – 700 024

: Appellant

VERSUS

Commissioner of Service Tax

Service Tax Commissionerate, Kolkata,
180, Rajdanga Main Road, Kolkata – 700 107

: Respondent

APPEARANCE:

Shri Deepro Sen, Advocate
Shri Vasudev A., Advocate
For the Appellant

Shri S.S. Chattopadhyay, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76693 / 2024

DATE OF HEARING / DECISION: 21.08.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order contesting the demand of interest and imposition of penalty on them by way of the impugned order.

2. The facts of the case are that the appellant is engaged in providing 'management, maintenance and repair service' to their clients. During the impugned period, the appellant received various input services in relation to providing their taxable services and

availed CENVAT Credit of the Service Tax paid on such services. One M/s. Egon Zehnder International, one of the appellant's input service providers, raised multiple invoices during the Financial Year 2008-09; in an invoice bearing number 253/08, they charged an amount of Rs.12,00,000/- as professional fees, Rs.1,80,000/- as out of pocket expenses and accordingly Service Tax was calculated at the rate of 12.36% which works out to Rs.1,70,568/-.

2.1 However, while recording in the computer system, the appellant took the CENVAT Credit of Rs.3,50,568/ by adding Rs.1,80,000/- inadvertently in their CENVAT Credit Account. In the month of September, 2009, CERA Audit was conducted for the impugned period and a spot memo was issued to the appellant, finding that the appellant had taken excess credit of Rs.1,80,000/-. Upon realizing that they had taken inadvertent credit, the appellant reversed the said credit which was lying unutilized in their CENVAT Credit Account.

2.2. Accordingly, proceedings were initiated against the appellant, to demand interest for the intervening period and to impose penalty under the Finance Act, 1994. The matter was adjudicated and the demand of interest was confirmed along with a penalty of Rs.3,00,000/- under Section 78 of the Finance Act, 1994. The appellant challenged the said order before the Ld. Commissioner (Appeals), who has rejected their appeal vide the impugned order.

3. Aggrieved from the said order, the appellant is before us.

4. Heard both sides.

5. Considering the fact that it is not disputed by the Revenue that the appellant was having sufficient balance in their CENVAT Credit Account during the intervening period when they had taken the excess credit inadvertently, therefore, by relying on the decision of the Hon'ble Karnataka High Court in the case of *Commissioner of C.Ex. & S.T., LTU, Bangalore v. M/s. Bill Forge Pvt. Ltd. [2012 (279) E.L.T 209 (Kar.)]* wherein it has been held that if the assessee is maintaining sufficient balance in their CENVAT Credit Account then they are not required to pay interest for the intervening period, we hold that no interest is payable by the appellant.

5.1. Since no demand is confirmed against the appellant, we hold that no penalty is imposable on the appellant.

6. In these circumstances, we do not find any merit in the impugned order and accordingly, the same is set aside.

7. In the result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)