CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50772 of 2022-SM
(Arising out of order-in-appeal No. 249(CRM) ST/JDR/2021 dated 14.09.2021 passed by the Commissioner (appeals) Central Excise & Central Goods and Service Tax, Jodhpur).

M/s Maa Chamunda Construction Company **Appellant**
Plot No. 12, Anand Mangal Vihar Colony
Behind Sainik Vishram Griha
Indra Colony, Barmer, Rajasthan-303328.

VERSUS

Commissioner of Central Goods and Service Tax **Respondent**
G-105, New Jodhpur Industrial Area
Opp. Diesel Shed, Basni
Jodhpur, Rajasthan– 302003.

APPEARANCE:

Sh. O. P. Agarwal, C.A. for the appellant
Sh. Ishwar Charan, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 50947/2022

DATE OF HEARING/DECISION: 28.09.2022

ANIL CHOUDHARY:

The issue involved in this appeal is whether cenvat credit on input services have been rightly demanded and penalty has been rightly imposed under Section 78 and 77 of the Act.

2. The brief facts of the case are that the appellant is registered with the Service Tax Department and are providing services under the 'Works Contract Services', 'Supply of Tangible Goods' and 'Supply of Manpower'. The appellant have filed the return (ST-3 and 4)

and also paid the admitted taxes. Based on third party data in the Form No. 26AS as compared with the appellant's balance sheet and ST-3 returns, it appeared to Revenue that appellant have short paid service tax amount of Rs.6,23,085/- for the period 01.10.2014 to 30.06.2017, under the aforementioned three heads of service. Accordingly, show cause notice dated 24.06.2020 was issued invoking the extended period of limitation. The amount short paid was demanded under the different heads (allowing credit for tax already paid) as follows:-

Sl. No.	Description	Amount Rs.
1	Under Works Contract Service	5,70,581/-
2	SOTG	11,126/-
3	Manpower Supply Service	41,378/-
	Total	6,23,085/-

3. The appellant filed reply to show cause notice on 18.02.2021 stating that after taking adjustment of the undisputed input service tax for input services received during financial year 2014-15 amounting to Rs. 1,38,059/-, vide six invoices, the balance amount payable comes to Rs.4,85,026/- + Rs. 40,000/- (towards penalty under Section 77) have been deposited on 18.02.2021. Thus, the appellant did not contest the demand on merits and deposited the duty short paid after claiming adjustment of input tax credit, which was not taken credit earlier. Further, prayed for relief in the matter of penalty under Section 77 and 78 of the Act. The show cause notice was adjudicated vide order-in-original dated 17.03.2021 denying the cenvat credit on input services received during the period 2014-15, observing that the credit should have been taken as per Rule 4(1) 3rd proviso of Cenvat Credit

Rules within a period of six months from the date of invoice. As such, credit was not taken earlier, the same cannot be allowed. Further, the proposed demand was confirmed and credit was allowed only for the amount of Rs. 4,85,026/- towards tax. Further, interest was demanded under Section 75 with equal penalty of Rs. 6,23,085/- was imposed under Section 78. Further, penalty under Section 77 Rs.40,000/- was imposed and same was appropriated, which amount already been deposited.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to reject the appeal upholding the order-in-original. Being aggrieved, the appellant is before this Tribunal.

5. Learned Counsel for the appellant urges that admittedly in the facts and circumstances, the transactions on which service tax as short paid have been raised, are duly recorded in the books of accounts and record maintained by the appellant. Admittedly, the appellant has paid substantial tax and filed the ST-3 returns. The tax demanded by the impugned order by way of short paid, which is due to calculation error, is also interpretational in nature. He further urges that admittedly appellant has received the input services of SOTG for the financial year 2014-15. Such invoices have been duly taken notice of in the order-in-original by the Court below and have not been found to be sham or incorrect. The appellant further relies on the decision of the Tribunal in the case of **Meta Pack** vs. **Collector of Central Excise, Bombay -2003 (161) ELT 1052 (Tri. Del.)** wherein the Tribunal confirmed the clubbing of two SSI units but allowed the benefit of

cenvat credit of inputs/ services to the assessee. He also relies on the decision of the Tribunal in the case of **Shriji Chemicals vs. Collector of Central Excise, Ahmedabad -1998 (98) ELT 375 (Tri.)** where final product, which were cleared under exemption notification, but later on have been held dutiable, it was held that benefit of credit due is not deniable while calculating the demand on the ground that required declaration has not been filed by the assessee. He also relies on the ruling of Allahabad High Court in the case of **Commissioner of Central Excise vs. Auto World -2010 (18) STR 5 (All.)** wherein it has been held that when the entire demand have been deposited at the adjudication stage, in such case penalty under Section 77 and 78 are fit to be set aside. Accordingly, he prays for allowing the appeal with consequential benefits.

6. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that in the facts and circumstances of the case, the transaction of input service of SOTG is duly recorded in the books of accounts. The appellant have received the service with supporting invoices and payment have been made in the regular course of business mainly through bank transfer as is evident from the copy of ledger account of the service provider maintained by the appellant in the books of account. The amount paid are also reflected in the bank account of the appellant, thus, the genuineness of the transaction is established. Admittedly, it is not the case of Revenue that appellant is claiming the credit second time. Under these facts and circumstances, I hold that benefit of cenvat credit

cannot be denied to the appellant following the precedent ruling of this Tribunal in the case of **Meta pack** and **Shriji Chemicals** (supra) referred to hereinabove. Further, in the facts and circumstances, I find that penalty is not imposable under Section 78 as the transaction is found recorded in the books of account and the short payment is mainly attributable to clerical error.

8. In this view of the matter penalty under Section 78 is set aside. So far as penalty under Section 77 is concerned, the same is confirmed as there is admittedly failure on the part of the appellant to assess and pay correct duty/ tax.

9. In view of my findings and observations, the impugned order is set aside and the appeal is partly allowed with consequential benefits to the appellant.

10. The appeal is partly allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant