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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75463 of 2015
(Arising out of Order-in-OriginalNo.11/COMMR/ST/BOL/15 dated17.02.2015 passed by Commissioner of Central Excise, Bolpur.)

Commissioner of Central Excise & Service Tax, Bolpur
(NanoorChandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)
...Appellant

VERSUS

M/s. Goyal MG Gases Private Limited
.....Respondent
(Inside ISP Burnpur Works, Burnpur, District-Burdwan, West Bengal.)

WITH

Service Tax Appeal No.75492 of 2015
(Arising out of Order-in-Original No.11/COMMR/ST/BOL/15 dated 17.02.2015 passed by Commissioner of Central Excise, Bolpur.)

M/s. Goyal MG Gases Private Limited
(Inside SAIL-ISP, Newtown Road, Newtown Burnpur, Bardhaman, West Bengal-713325..)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur
(NanoorChandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)
.....Respondent

APPEARANCE
Shri Pawan Kr. Pahwa, Advocate for the Appellant (s)/Assessee
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI RAJU, MEMBER(TECHNICAL)

FINAL ORDER NO. 75137-75138/2022

DATE OF HEARING : 16 November 2021
DATE OF DECISION : 14 March 2022

P.K.CHOUDHARY :

The facts of the case in brief are that the Appellant is engaged in the manufacture of Oxygen and argon gases for various iron and steel manufacturers across India. The Appellants have entered into an

agreement with M/s. Indian Iron & Steel Co. Ltd. (IISCO) a fully owned subsidiary of M/s.SAIL for its steel plant at Burnpur, West Bengal (hereinafter referred to as SAIL, ISP) for supply of Oxygen gas at their factory. In order to maintain continuous supply of Oxygen, the contract stipulates that the Appellant would install fixed facilities on 'Build-Own-Operate' basis in the factory which were being used by the Appellant to ensure uninterrupted supply of Oxygen to M/s.SAIL, ISP. Copy of the contract dated 17.03.2004 has been filed along with the written submissions. As per the contract,the Appellant in addition to the price of gas, was entitled for 'fixed facility charges' for creation of appropriate facilities to ensure uninterrupted supply of Oxygen of the specified parameters. The Appellant was paying excise duty on the fixed facility charges by considering the same as part of the transaction value of gas for the period prior to August 2009. The Department entertained a view that the fixed facility charges shall not be added to the value of the gas cleared to SAIL, ISP and no excise duty is payable on the same and accordingly no Cenvat credit on this value is available to SAIL, ISP. Accordingly, SAIL, ISP stopped reimbursing the excise duty to the Appellants. Therefore, from August 2009, the Appellant is not discharging any excise duty on fixed facility charges under the *bona fide* belief that no excise duty is payable on the same. After introduction of negative list w.e.f. 01.07.2012, the Appellants started discharging Service Tax on the fixed facility charges. Further, as submitted by the Appellant that since the invoices for the period from 01.04.2012 to 30.06.2012 were issued by the Appellant after 01.07.2012, the Appellant discharged Service Tax on the same to avoid any dispute. The Department conducted audit of the Appellant and during audit it was alleged that the fixed facility charges received by the Appellant falls within the purview of 'Business Support Services' and the same is liable to Service Tax. The Show Cause Notice dated 05.02.2013 was issued alleging that the Appellant has not discharged their Service Tax liability under the category of 'Business Support

Service' for the period from August 2009 to November 2012. The Show Cause Notice proposed as under:-

(i) Service Tax amounting to Rs.1,33,12,000/- (One Crore Thirty-three Lakh Twelve Thousand only), Education Cess amounting to Rs.2,66,240/- (Two Lakh Sixty-six Thousand Two Hundred Forty only) and Secondary & Higher Education Cess amounting to Rs.1,33,120/- (One Lakh Thirty-three Thousand One Hundred Twenty only), totaling to Rs.1,37,11,360/- (One Crore Thirty-seven Lakh Eleven Thousand Three Hundred Sixty only) should not be demanded and recovered from them in terms of proviso to Section 73(1) of the Finance Act, 1994;

(ii) Interest at the prescribed rate applicable during the relevant period should not be charged and paid by them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994, for their failure to pay Service Tax within due date;

(iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994, for their failure to obtain registration as well as filing proper return as required under the provisions of the Finance Act, 1994;

(v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994, for deliberate suppression of facts from the department with the sole intention to evade payment of Service Tax.

2. The Ld.Adjudicating authority vide the impugned order-in-original confirmed the demand of Service Tax along with interest and imposed penalty of Rs.10,000/- each under Section 77(1)(a), 77(1)(b), 77(1)(d) of the Act and penalty of Rs.68,55,680/- under Section 78 holding that the fixed facility charges fall within the ambit of 'Business Support Service' and the same is liable to Service Tax. However, the Ld.Adjudicating authority dropped the penalty proposed under Section 76 and reduced the penalty under Section 78 of the Act up to 50% of the total demand. The Department is in Appeal, being Service Tax

Appeal No.75463 of 2015, against the impugned order imposing reduced penalty (50%) under Section 78.

3. Being aggrieved by the impugned order, the Appellant/Assessee has also preferred Appeal being Service Tax Appeal No.75492 of 2015.

4. Shri Pawan Kumar Pahwa, Ld.Advocate appearing on behalf of the Appellant/Assessee filed a compilation containing Written Submissions, copy of the contract, copy of Show Cause Notice, copy of Order-in-Original and relied upon Circulars,case laws, etc. and submitted that the main activity of the Appellant is manufacture and supply of gas to the client and in furtherance of the same the Appellant had installed fixed facilities in terms of specific contracts with the buyer/client for continuous supply of gas. He argued that thiscannot be considered as providing 'Infrastructure Support Service' or 'Business Support Service'. The Ld.Counsel further submits that to fall within the ambit of 'Business Support Services', it is essential that the activity should be supportive to the main activity undertaken by the buyer/customer. Whereas in the present case, the activity of installing and maintaining fixed facility undertaken by the assessee for supplying Oxygen gas manufactured by it to the buyers/customers. It is the case of the assessee that the fixed facility installed by the assessee is used by them and it is in no way construed as supporting activity for the customer of the assessee. It is his submission that the fixed charges received by the assessee from the customer/buyer cease to fall within the ambit of 'Business Support Services'. Accordingly, he submits that the demand of Service Tax as confirmed by the Ld.Adjudicating authority vide the impugned order is not sustainable and is liable to be set aside. He prays for allowing their Appeal and dismissing the Appeal filed by the Department.

5. Shri S.S.Chattopadhyay, Ld.Authorized Representative for the Revenue reiterated the grounds of appeal in case of Department's Appeal and justified the impugned order in case of Assessee's appeal.

6. Heard both sides through video conferencing and perused the Appeal records.

7. The issues before us are as under:-

(a) Whether the fixed facility installed by the Appellant assessee in the present case is outside the purview of the Finance Act, 1994.

(b) Whether cum-duty benefit is available to the assessee.

(c) Whether extended period is invocable.

8. The Department has contended that fixed facilities installed by the Appellant in the premises of the customer/buyer for uninterrupted supply of gas supplied by them to the customer/buyer falls within the preview of Business Support Services and therefore, the same is liable to service tax.

9. In this connection it shall be relevant to refer the term "Support service of business or commerce". Support service of business or commerce is defined in Section 65(104c) of the Act which reads as follows:-

> *"Support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.'*
>
> *Explanation. — For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;"*

10. On perusal of the above statutory definition, it is clear that provision of supply of gas manufactured by the Appellant is not categorized in any of the activities itemized therein. With regard to the infrastructural support services and other transaction processes, the explanation appended to the definition clause provides that infrastructural support service should include the office utilities and other facilities provided for smooth running of the office establishment.

11. In the present case, the main activity of the appellant is manufacture and supply of gas to the customer/buyer and in furtherance of the same, the Appellant had installed fixed facilities in terms of specific agreements with the customers/buyers for continuous supply of gas. The same cannot be considered as providing 'infrastructure support service' or 'business support services'.

12. The clarification issued vide Letter No. 334/4/2006-TRU, dated 28-2¬2006 made it very clear that the intention was to tax those services/ activities under the category of business which were outsourced. The relevant extracts may be read as under:

> *"3.13 Business Support Services: Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services"*

13. In the present case, it is an admitted fact that the appellantassessee is engaged in the manufacture and sale of oxygen gases. They have entered into agreement with customer/buyer for sale of such industrial gases and as per the agreement the Appellant assesseehave to ensure uninterrupted supply of gas in the factory of the customer/buyer for which they have installed fixed facilities in the premise of customer/buyer. Thus in the present case the Appellantassessee has not undertaken any service activity for the customer/buyer by installing fixed facilities. Therefore, no question of outsourcing of any activity by the customer/buyer to the Appellantassessee arises in this case. Thus, charges received by the Appellantassessee in respect of fixed facility are outside the preview of the Business Support Services.

14. The CBEC vide Circular No. 109/3/2009-ST Dated 23/2/2009 clarified that Business Support Service' is a generic service of providing support to the business or commerce of the service receiver. In other words, principal activity is to be undertaken by the client while assistance or support is provided by the service provider. Thus an activity on its own account shallnot to be considered as 'Support Services'. Relevant extract of the circular is reproduced below:

> *"The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/ exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'. "*

15. We find that to fall within the ambit of Business Support Services it is essential that activity should be supportive to the main activity undertaken by the client. Where as in the present case, the activity of installing and maintaining fixed facility undertaken by the Appellantassessee for supplying oxygen gas manufactured by it to the buyer/client. Thus, in this case the fixed facility installed by the Appellantassessee is used by the Appellantassessee itself and it is in no way construed as supporting activity for the buyer/client of the Appellantassessee. Given this, fixed charges received by the Appellantassessee from the buyer/client cease to fall within the ambit of business support services. Therefore, demand of service tax confirmed by the Ld. Adjudicating Authority is not sustainable and is liable to be set aside.

16. The CBEC vide Circular No. 159/10/2012-ST Dated 19/06/2012 has further clarified that business support services was meant to capture such services that are ordinarily outsourced by business entities. Relevant extract of the Circular dated 19.06.2012 is reproduced below for ready reference:

"It is evident that this circular has clarified that the new service was meant to capture such services as are ordinarily outsourced by business entities. The audit activity is not an outsourced function but is carried out in statutory fulfillment of duties. Thus the services by CAG would also not be covered by the service head 'Business Support Service"

17. In the present case, Installing and maintaining fixed facility is not the activity of the buyer/client which is carried out by them in ordinary course of business and outsourced to the Appellantassessee. The activity of installing and maintaining fixed facility is undertaken by the Appellantassessee for supplying oxygen gas manufactured by it to the buyer/client in terms of the agreemententered with the buyer/client. As per the Agreement, the Appellantassessee is responsible for supplying the oxygen gas to factory premise of the buyer/client. Thus, fixed facility cannot be construed as activity which is outsourced by the buyer/client to the Appellantassessee. Accordingly, the allegation of the Ld. Adjudicating Authority that the activity undertaken by the Appellantassessee in the present case fall under the ambit of business support services is not sustainable.

18. We find that identical issue arose before the Tribunal in the case of Air Liquide North India Pvt. Ltd. Vs. Commissioner Of C. Ex., Jaipur 2017 (4) G.S.T.L. 230 (Tri. - Del.). In the said case, the Appellant was engaged in providing gas storage facility along with connected accessories in furtherance of facilitating sale of gas by appellant and purchase of same for industrial use by client. The Department contended that the facility provided by the Appellant falls within the ambit of Business Support Services and demanded service tax from the Appellant. The Tribunal in the said case has held that the amount received towards facility fee etc. is not to be regarded as consideration for providing business support to client and dropped the demand of service tax in respect of the same.

19. The said decision of the Tribunal has been affirmed by the Hon'ble High Court of Rajasthan and the same is reported as 2019 (27) G.S.T.L. 194 (Raj.)

20. Further, in the case of Mundra Port 86 Special Economic Zone Ltd., 2012 (27) S.T.R. 171 (Tri. Ahd), the Tribunal has held that providing railway lines inside the port area for the railways to move the wagons cannot be considered as providing infrastructural facilities to the railways. It is a beneficial arrangement for both the parties and there is no service of business support by one to another.

21. It is also submitted that the fixed facility installed by the Appellant in the present case is for supply of Oxygen gas at the premises of the client. In terms of clause 9 of the Agreement entered with the client, the Appellant is responsible for continuous supply of Oxygen gas in the factory premises of the client and provision of necessary facilities to ensure the continuous supply is also the responsibility of the Appellant. Hence, in the present case, by installing and maintaining the fixed facilities, the Appellant was not providing any service to the client rather fixed facilities installed and maintained by the Appellant in the present case for its own purpose i.e. manufacturing and supplying oxygen gas to the client. Hence, the impugned activity of the Appellant is outside the preview of the Finance Act, as no services per se is being performed by the Appellant for the client.

22. It is submitted that the CBEC Circular No. F. No. 6/03/2013/CX.1 dated 10.11.2014 clarified that fixed facility charges are to be added to the value of the gas cleared, and excise duty is to be paid on the same. The relevant para from the circular is extracted hereunder for ready reference:

> *"5. In view of the same, it is clarified that:*
>
> *(a) In the months where there is a supply of gas, all elements of consideration such as price of gas at designated rate per unit of gas and FFC would be added to determine the assessable value for payment of Central Excise duty. In those months where MTOP is charged, the same shall be added to FFC to determine assessable value.*
>
> *(b) FFC paid for the months when there was no supply of gases is to be added in the price of gas supplied in the subsequent month, in addition to the price arrived for that month as per (a) above.*

(c) If FCC is paid for months during which no gas was supplied and there is no subsequent supply of gas, then FCC paid for months for which there was no supply of gases is to be added to the price of gases supplied in earlier month by way of raising a supplementary invoice in addition to the prices arrived for that month as per (a) above.

(d) Where the gases so supplied are used by another assessee as inputs admissibility of CENVAT Credit of duty paid on gases as reflected in the invoice for all situations covered in para (a), (b) & (c) above, would be decided in accordance with provisions of CENVAT Credit Rules, 2004. "

23. In the present case also, the Appellant was paying excise duty on theamount of fixed facility charges till August, 2009. However, in the year 2009, the department issued a Show Cause Notice to the client of the Appellant denying the input tax credit availed by them on the fixed facility invoices received from the Appellant contending that the fixed facility charges paid by the them are not part of the transaction value of gas supplied by the Appellant and therefore no excise duty was payable on the same and consequently, they are not entitled for the input tax credit.

24. It is submitted that after issuance of show cause notice, the client of the Appellant stopped reimbursing excise duty. Given this, Appellant stopped paying excise duty on the fixed facility charges. Further the Appellant has not paid service tax on the fixed facility charges, as the Appellant is of the belief that the same does not fall in any of the category of the services specified in the Finance Act, 1994 prior to 01.07.2012.

25. The Tribunal in the case of BOC India Ltd. Vs. Commissioner Of Central Excise, Jaipur 2018 (10) G.S.T.L. 309 (Tri. - Del.) has held that the Fixed Facility charged received from the client in respect of fixed facility installed in the premises for storage and supply of gas to the client is part of transaction values of gas and by relying on the circular No. F. No. 6/03/2013/ CX.1 dated 10.11.2014 set aside the demand of service tax confirmed by adjudicating Authority.

26. Similar view has been taken by the Hon'ble High Court of Madras in case of Inox Air Products Pvt. Ltd. Vs. Union Of India reported at 2020 (38) G.S.T.L. 158 (Mad.).

27. The ratio of the above judgment is squarely applicable to the facts of the present case. Accordingly, the demand of service tax confirmed by the Ld. Adjudicating Authority is not sustainable as fixed facility charges are outside the preview of the Finance Act, 1994.

28. It is submitted that the Appellant has paid the service tax w.e.f. 01.04.2012.

29. The Appellant was paying excise duty on the amount of fixed facility charges till July, 2009. However, in the year 2009, since the department has issued a Show Cause Notice to the client of the Appellant denying the input tax credit availed by them on the fixed facility, invoices received from the Appellant contending that the fixed facility charges paid by the them are not part of the transaction value of gas supplied by the Appellant, the client of the Appellant has stopped reimbursing the excise duty to the Appellant contending that the fixed facility charges are not liable to excise duty. Given this, the Appellant stopped paying excise duty on the fixed facility with effect from August, 2009.

30. The said matter has been decided in favour of M/s SAIL by the Tribunal vide F.O. 75854/2018 dated 23.03.2018. This clearly establishes that FFC charges are not towards provision of any service.

31. Further, the Appellant has not paid service tax on the fixed facility charges, as the Appellant is of the belief that the same does not fall in any category of the services specified in the Act prior to 01.07.2012. However, as the scope of services was widened with effect from 01.07.2012, to avoid any disputes the appellant started paying service tax on the same. Since, the invoices for the period 01.04.2012 to 30.06.2012 were raised after 01.07.2012, the Appellant also discharged service tax for the said period also.

32. As the Appellant has already discharged service tax of Rs. 38,40,203/-out of which Rs. 31,64,160/- toward the period 01.04.2012

to 30.06.2012, the demand of service tax confirmed for period after 01.04.2012 is not sustainable.

33. We find that as per the provisions of Section 67(2) of Finance Act, 1994 where the gross amount charged by the service provider for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

34. It has been clarified by Booklet namely Service Tax - Frequently Asked Question (FAQ) on Service Tax 6TH Edition of Service Tax (FAQ) issued by Director General of Service Tax vide para 7.3 that service tax shall be payable by amount realized and amount so realized would be treated as gross amount inclusive of service tax.

35. In the present case it is admitted by the Department that the Appellant assessee has not charged service tax separately from the client. Given this, the service tax should have been computed backward by treating the total receipts as inclusive of service tax. Reliance in this regard is placed on the following precedents:

- Service Tax, Bangalore Vs Prompt 85 Smart Security 2008 (9) S.T.R. 237 (Tri. Bang.)
- SrichakraTyres 1999 (108) ELT 0361 (Tri.-LB)
- CCE VsMarutiUdyog Limited 2002 (141) ELT 0003 (S.C.)
- Panther Detective Services Vs. CCE, Kanpur, 2006(07) LCX0147Eq 2006 (004) STR 0116 (Tri. -Del.)Bhagawati Security Services Vs. CCE, Meerut-I, 2006(06)LCX0030Eq 2006 (003) STR 0762 (Tri.-Del.)

36. It is submitted that the SCN in the present case has been issued on 04.02.2013 for the period August 2009 to November, 2012. As per the provisions of Section 73(1), the authorities can issue show cause notice within one year from the relevant date and the extended period of limitation i.e. 5 years can be invoked only if there is intent to evade tax due to fraud; or collusion; or wilful miss-statement; or suppression of facts.

37. It is submitted that in the present case there is no suppression of facts by the Appellant. The department was always aware of the activity undertaken by the Appellant. The Appellant was discharging excise duty on value of fixed facility charges from the beginning. However, later on the department had issued show cause notice to the client of the Appellant (Steel Authority India Limited) to deny the ITC of excise duty paid by the Appellant contending that the fixed facility charges do not form part of the transaction value of oxygen gas supplied by the Appellant. The client of the Appellant stopped paying excise duty to the Appellant thereafter.

38. Further, the Appellant has not discharged service tax on the fixed facility charges being of *bonafide* belief that the said fixed facility is installed for the Appellant's use and benefit and they are not providing any service to the client and the activity of installing and maintaining fixed facilities for supplying of oxygen to the client do not fall under any category of service defined during the period prior to 01.07.2012 i.e. before introduction of negative list. Further, after introduction of the Negative list as the scope of service was much widened, the Appellant started paying service tax after 01.04.2012. It is submitted that that there was no intention to evade the payment of Service tax in the present case. Therefore, the demand of service tax confirmed by the Ld. Adjudicating Authority by invoking extended period is not sustainable and liable to be set aside.

39. It is held in plethora of judgments that where the facts were in the knowledge of the Department, in such situation, extended period cannot be invoked. In case of Maheshwari Mills Ltd. Vs. Commissioner Of C. Ex., Ahmedabad [2004 (165) E.L.T. 246 (Tri. - Del.)] the Tribunal has held that suppression of fact cannot be alleged when facts were within the knowledge of the department. Relevant extract of the judgment is reproduced below for ready reference:

> *“5. A perusal of the records makes it clear that the method of valuation adopted by the appellants and the elements of cost of processes included in the assessable value were known to the jurisdictional Central Excise authorities through price lists and cost working sheet*

made available. It is well settled that when the same facts are known to both sides, it is not open for one side to allege that suppression of facts have been made by the other side. The appellant's case will be covered by this principle. That the appellant was working out assessable value only up to the spindle stage and the element of cost included by the appellant were known to the jurisdictional Central Excise authorities. In these circumstances, we are of the view that the demand made by taking resort to proviso to Section 11A is not sustainable."

40. Similar view has been taken by the Tribunal in case of Kayem Food Industries Pvt. Ltd. Vs. Commissioner Of C. Ex., Delhi-III 2018 (10) G.S.T.L. 394 (Tri. - Chan.) and in the case of International Foundation For Research And Education Vs. C.C.E. & S.T., Rohtak 2020 (41) G.S.T.L. 339 (Tri. - Chan.).

41. The ingredients for invocation of extended period of limitation under Section 73(1) of the Act and imposition of penalty under Section 78 of the Act are identical. We find that once the extended period of limitation cannot be invoked in the facts of the presentcase, there is no question of imposition of any penalty under Section 78 of the Act.

Appeal No. - ST/75463/2015-filed by the Department

42. This Appeal has been preferred by the Department against order of Ld Adjudicating Authority for reducing the penalty proposed underSection 78 of the Act by 50% of the total demand. It has been contended by the Department that the Ld. Adjudicating Authority has extended the benefit to M/s Goyal MG Gases (Respondent) on the ground that the demand in the present case is based on the recorded financial statement. However, the financial statement alone do not constitute the specified records `containing true and complete details of the transactions' and therefore it appears that the Ld. Adjudicating Authority has erred in extending the said benefit to the respondent.

43. We observe that the Respondentassessee has maintained all the records and recorded all the transaction in the financial statements. The said fact has not been disputed by the Department. The only contention is that financial statement alone cannot be considered as specified recordcontaining true and complete records. However, the Department

has failed to specify what are the other specified records which have not been maintained by the respondent assessee. The Department has not brought on record any list of documents/ records not maintained by the respondentassessee.

44. We find that when that entire demand of tax is based on the figures / facts available in the financial records, it cannot be said that the Appellantassessee has not made appropriate disclosures. In the case of HINDALCO INDUSTRIES LTD. VS. COMMISSIONER OF C. EX., ALLAHABAD reported at 2003 (161) E.L.T. 346 (Tri. - Del.), the Tribunal has held that suppression of the fact can not be alleged when the demand is raised on the basis of information appearing in Balance sheet. In view of the above, the appeal filed by the Department is liableto be dismissed and we do so.

45. We find that the main matter (demand matter) is covered by the decision of Hon'ble High Court in case of M/s Inox Air Products Pvt. Ltd. Vs. Union Of India reported at 2020 (38) G.S.T.L. 158 (Mad.) and the decisions of the Tribunal in the case of BOC India Ltd. Vs. Commissioner Of Central Excise, Jaipur 2018 (10) G.S.T.L. 309 (Tri. - Del.) and in the case of Air Liquide North India Pvt. Ltd, Vs. Commissioner Of C. Ex., Jaipur 2017 (4) G.S.T.L. 230 (Tri. - Del.).

46. In view of above discussions,the appeal filed by the Department is dismissed and the appeal filed by the assessee is allowed with consequential relief.

(Order pronounced in the open court on 14 March 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(RAJU)
MEMBER (TECHNICAL)

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