Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.12475 of 2018

(Arising out of OIO-AHM-EXCUS-003-COM-005-18-19 dated 27/06/2018 passed by Commissioner of Service Tax-AHMEDABAD-III)

BLACK BOX LIMITED **.....Appellant**
(Formerly Known As Avaya Global Connect Ltd),
Gandhinagar, Gujarat

VERSUS

C.C.E. & S.T.-AHMEDABAD-III **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri P P Jadeja, Consultant for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU
Final Order No. A/ 10377 /2023

DATE OF HEARING: 16.01.2023
DATE OF DECISION: 01.03.2023

RAMESH NAIR

Appellant has filed this present appeal being aggrieved by Order-in-Original No. AHM-EXCUS-003-COM-005-18-19 dated 27.06.2018 passed by the Commissioner of Central Excise & Service tax, Ahmedabad –III.

02. The brief facts of the case is that M/s Avaya Global Connect Ltd. (Formerly known as M/s AGC Networks Ltd and Presently known as M/s Black Box Ltd.) is manufacturer of EPABX System and has provided taxable services of "Erection Commissioning and Installation", Maintenance or Repairs", "Consulting Engineering", "Scientific and Technical Consultancy Services" and registered with the Service tax department. During the course of audit, it was observed by the department that Appellant has provided exempted as well as taxable services to their clients situated at Jammu & Kashmir and services provided to the units of situated in Special Economic Zones. In view of the Section 64 of Finance Act 1994, Service tax was not leviable on services provided in the State of Jammu & Kashmir. The Service provided in the SEZ units were exempted vide Notification No. 4/2004-ST

dated 31.03.2004. Thus as per the definition of 'exempted service' given in Rule 2 (e) of Cenvat Credit Rules 2004 these both the services are exempted services. It was found that Appellant had not maintained separate account in respect of receipt, consumption and inventory of input services meant for use in providing output services which were chargeable to tax as well as exempted service, as provided under Rule 6(2) of Cenvat Credit Rules, 2004, but they had availed Cenvat Credit on the entire input services received by them. Thus as per condition of clause (c) of Rule 6(3) of Cenvat Credit Rules 2004 w.e.f. 10.09.2004 appellant were required to utilize credit only to the extent of an amount not exceeding 20% of the amount of Service tax payable on taxable output services. Prior to this date, the service provider were entitled to the extent of 35% of the Service tax payable on taxable output service as per sub-rule (5) of Rule 3 of erstwhile Service tax Credit Rules, 2002. It was noticed that appellant had utilized cenvat credit of more than admissible amount i.e. 20% /35% of the amount of Service tax payable on taxable output services. Accordingly, show cause notice was issued to the Appellant for short payment of Service tax. The said show cause notice was adjudicated vide OIO dated 30.03.2009 wherein entire demand was confirmed. Being aggrieved with the order appellant had preferred an appeal before CESTAT. Vide Order dated 06.01.2010 CESTAT remanded the matter back to the adjudicating authority for fresh decision. Thereafter the matter was again decided vide OIO dated 26.06.2012 and Appellant filed appeal before the Tribunal. Thus, vide final order dated 03.12.2012, tribunal had remanded case again to the Commissioner for fresh decision. Learned Commissioner in *denovo* adjudication again confirmed the demand vide impugned order, therefore appellant is before us.

03. Shri P P Jadeja, Learned Consultant for the appellant submits that unless department shows in SCN itself that Appellant has availed credit of input services which have also been used for providing any of exempted services, then only, question arise for maintaining separate account for receipts, consumption, inventory of Input and input services meant for use in taxable and exempted services. Therefore, when Appellant claims not to have taken credit on common input services for output services provided in Jammu & Kashmir, hence such burden of proof is not discharged by department who is making allegation that credit is taken on input services.

3.1 He also submits that Section 51 of SEZ Act has over ridding effect over provisions of other Acts & Rules, as provided that supply of goods and services from the Domestic Tariff Area to SEZ unit or Developer are exports in terms of section 2(m) of SEZ Act. Further, Rule 6(6A) of Cenvat Credit Rules 2004 having retrospective effect has provided obligation of manufacturer or provider of output service, stipulates that provision of sub-rules (1),(2),(3) and (4) shall not be applicable in case taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorized operations. Thus in facts of this case, supply of service to unit in SEZ were 'exports' and therefore all benefits of 'exports' would be available to the Appellant. Accordingly, in terms of Rule 6(6A) of Cenvat Credit Rules, 2004, there was no requirement to reverse any amount of Cenvat Credit in terms of Rule 6(3) of the Cenvat Credit Rules, 2004, when 'taxable services' are provided, without payment of service tax, to a unit in a Special Economic Zone with due procedure. He placed reliance on the following decisions:

- HEWLETT PACKARD INDIA SALES PVT. LTD. VS. CCE -2014(35)STR 410 (TRI. BANG.)
- CCE VS. ELINS SWITCH BOARDS PVT. LTD. -2017(49)STR 398(KAR.)
- CCE VS. FOSROC CHEMICALS (INDIA) PVT. LTD. -2015(318)ELT 240 (KAR.)
- CCE VS. DEE DEVELOPMENT ENGINEERS PVT. LTD. -2016(339)ELT 560 (P&H)
- UOI VS. STEEL AUTHORITY OF INDIA LTD. -2017(297)ELT 166 (CHHATTISGARH)
- COMMISSIONER VS. INDIA CEMENT LTD. -2020(34)G.S.T.L. 425(TELANGANA)
- SUJANA METAL PRODUCTS LTD. VS. CCE – 2011(273)ELT 112(TRI. BANG.)
- RELIANCE PORTS AND TERMINALS LTD. VS. CCE -2015(40)STR 200(TRI. AHMD.)

3.2 Further he submits that Appellant has not provided services in the state of Jammu & Kashmir. Such service were provided by sub-contractor Excel Marketing Corporation. There is clear error committed by Commissioner in not considering that services to clients in State of Jammu and Kashmir were actually rendered by sub-contractor. The seized

documents from appellant in connection with another enquiry including bills, vouchers, receipts, etc. concerning sub-contractors submitted with specimen documents which have been taken on record. Commissioner had no Justification to ignore appellant's submission that sub-contractors had actually provided services to clients in State of Jammu and Kashmir without service tax. The Appellant have not taken credit of inputs or input services for output services in the State of Jammu and Kashmir. The Commissioner has brushed aside the same on the ground that appellant had not submitted copies of contracts with sub-contractors and that documents substantiate that appellant had provided exempted service in Jammu & Kashmir by Sub-contractors. The Commissioner could not have held that the Appellant company had provided the above services in the State of Jammu and Kashmir. On one hand, Commissioner has not disputed documents which were duly entered in the Appellant's books of account including ledger, but on the other hand, the Commissioner has ignored this submission. The established fact of above services having been rendered by the sub contractor in the State of Jammu and Kashmir was summarily rejected and this shows unreasonable and arbitrary approach in the adjudication. In any case, sub-contractor had provided services to clients in Jammu and Kashmir and appellant has not taken credit of input services used in providing services by sub contractors stand established. The demand in terms of Rule 6(3)(C) of the Cenvat Credit Rules is illegal.

3.3 He also submits that transaction were revenue neutral as excess untilization of Cenvat Credit in one month by appellant would result in more payment from PLA in subsequent months, and vice-versa; because the appellant has been in any case paying huge amount through PLA as service tax. Statement submitted with appeal shows that appellant has paid amount of Rs. 12,08,13,438/- from PLA. Thus there would not have been any prejudice to revenue or gain to Appellant. He placed reliance on following decisions:-

- NARMADA CHEMATUR PHARMACEUTICALS LTD. – 2005(179)ELT 276(SC)
- CCE, PUNE VS. COCA –COLA INDIA PVT. LTD. – 2007(213)ELT 490(SC)
- JAY YUHSHIN LTD. VS. CCE- 2000(119)ELT 718 (TRIBUNAL –LB)
- CCE VS. INDEOS ABS LTD – 2010(254)ELT 628 (GUJ.)

- KANSAI NEROLAC PAINTS LTD. VS. CCE-I – 2016(339)ELT 467 (TRI. AHMD.)
- CCE VS. GUJARAT GLASS PVT. LTD. – 2013 (290) ELT 538.
- PRECOT MILLS LTD. VS. CCE – 2014(313) ELT 789 (TRI. BANG.)
- ALEMBIC LTD. VS. CCE, VADODARA-I- 2014 (308) ELT 535(TRI. AHMD)
- CCE VS. SPECIAL STEEL LTD.- 2015(329)ELT 449 (TRI. MUMBAI)
- MAHINDRA & MAHINDRA LTD. VS. CCE – 2016(333)ELT 124(TRI.-MUMBAI)

3.4 He argued that it is a settled legal position that in cases where an assessee had not maintained separate accounts for cenvat credit attributable to taxable services and exempted services and cenvat credit for all inputs services was taken, then on paying back amount of cenvat credit attributable to the exempted services, the situation was as if no cenvat credit was taken by the assessee of exempted services. Therefore, the demand that revenue could have made in the present case was payment/ reversal of amount of cenvat credit of input service attributable to exempt services. There is no contravention of provisions of Rule 6 and impugned order has erred in confirming the total demand of Rs 2,69,93,599/-. He placed reliance on the following decisions:-

- HELLO MINERALS WATER PVT. LTD. VS. UIO – 2004 (174)ELT 422 (ALL)
- HI-LINE PENS PVT. LTD. VS. COMMISSIONER – 2003(158)ELT 168 (TRI. DEL)
- BHARAT EARTH MOVERS LTD. VS COLLECTOR -2001(136)ELT 225 (TRI. BANG.)
- CCE, AHMEDABAD –II VS. MAIZE PRODUCT- 2009(234)ELT 431 (GUJ.)
- MERCEDES BENZ INDIA LTD. – 2015(40)STR 381

3.5 He also argued that demand of Rs. 2,69,93,599/- has been wholly time barred because there was no suppression of facts and assessment of tax had also been made correctly by the appellant for the entire period. The dispute raised by Revenue was that tax assessed was required to be paid in cash and not through credit. There was no suppression of facts on assessment of service tax liability as disclosed in returns. Range and Divisional officers had never raised objection. Suppression of facts or mala

fide intention could not have attributed to Appellant. Appellant has filed ST-3 returns contain details of taxable services, value of taxable service and tax liability discharged. Appellant has admittedly paid full amount of service tax for entire period and details of payment also been shown in ST-3 return. Therefore, the basis on which extended period of limitation is invoked in this case is illegal and without any justification. He placed reliance on the following Judgments:-

- PADMINI PRODUCTS. -1989(43)ELT 195 (SC)
- CHEMPHAR DRUGS & LTD. – 1989(40)ELT 276(SC)

04. Shri Tara Prakash, learned Deputy Commissioner (AR) representative reiterates the findings in the impugned order.

05. We have carefully considered the submissions from both the sides and perused the records. We find that in this case, Appellant had actually discharged the Service Tax liability by way of payment through credit. Therefore, it cannot be said that the Appellant had not paid the Service Tax. Revenue has invoked provisions of Rule 14/Rule 6 of the Cenvat Credit Rules for demand of service tax, according to which, when the assessee avails Input Service Credit for rendering both taxable and exempted output service, then there would be a restriction of 20% for availment of credit for payment of tax on output service. As per revenue,appellant has utilized 100% of credit taken instead only 20% as was prevalent during the relevant period in terms of Rule6(3)(c) of CCR, 2004. It is true that during the relevant period only 20% of credit could be utilized but we find force in the argument of the appellant that they were not barred from taking credit but were only barred from utilizing it. They were free to utilize remaining 80% in the immediate next financial year.

5.1 Further we also find that the prevailing provisions of Rule 6(3)(c) of the Cenvat Credit Rules,2004 provides as under :

> *"6(3)(C) the provider of output service shall utilized credit only to extent of an amount not exceeding twenty percent. of the amount of service tax payable on taxable output service'*

The excess utilized credit cannot be demanded, as Rule6(3)(c) is silent with regard to the period during which the 20% credit shall be utilized and in this regard Tribunal in case of *Vijayanand Roadlines Ltd.* v. *CCE, Belgaum*

reported in 2007 (7) S.T.R. 219 (Tri.-Bang.), with reference to Rule 3(5) of the Service Tax Credit Rules, 2002, which is *pari materia* with Rule6(3)(c) of the Cenvat Credit Rules, 2004, has held that the utilization is not restricted to monthly or quarterly basis and that it can be utilized at any time. We agree with this submission. In the case of *Vijayanand Roadlines Ltd.* (supra) the Appellant during June 2003 to December 2003 period, as against service tax credit utilization quota of 35% of the total service tax payable, had paid entire service tax through PLA and they utilized the unutilized quota of payment through duty credit for January 2003 - December 2003 period, during January 2004 - March 2004 period and the Tribunal held that there is no time frame fixed in Rule 3(5) of the Service Tax Credit Rules, 2002 for utilization of the credit to the extent of 35% of the tax liability.

5.2 Therefore, in the present matter the demand of service tax on this ground does not sustain. As several years have passed, the appellant would have been entitled to utilize the credit subsequent to the period in question and therefore the demand on this ground is not sustainable.

5.3 Without prejudice the above we also find that the revenue's case is on the basis that Appellant has provided taxable services to their clients in the State of Jammu & Kashmir, without maintaining separate account of receipts, consumption & use of Cenvat Credit. Therefore, Rule 6(3)(C) of Cenvat Credit Rule will attract which restricted utilization of credit upto 20% for the disputed period. However in the present matter appellant produced the copy of Bills in support of their argument that they have not provided the services to client of Jammu & Kashmir but such services were provided by sub-contractor M/s Excel Marketing Corporation. Appellant provided the services of M/s Excel Marketing Corporation. However even if assume that Appellant provided the services to the client of Jammu &Kashmir demand of service tax legally not sustainable. The provisions of Rule6 of Cenvat Credit Rules comes into application when the manufacturer/service provider avails credit on inputs/input services used for manufacture of final products or providing output service which are chargeable to duty/tax as well as exempted goods/exempted services. The proviso to sub-clause (2) of Rule 1 of Cenvat Credit Rules states that 'nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir'. Again, as per Section 64 of the Finance Act, 1994, the Act extends to the whole of India except the State of Jammu & Kashmir.

Thus, there is no levy of service tax on the services provided in Jammu & Kashmir. The Department has construed the services rendered in Jammu & Kashmir to be exempted service. As per the definition given in Rule 2(e) of CENVAT Credit Rules 'Exempted services' means taxable services which are exempt from the whole of the service tax leviable thereon and includes services on which no service tax is leviable under Section 66 of the Finance Act. Since the service provided to the state of J&K are not liable to service tax, as Section 64 of Chapter V of Finance Act, 1994 excludes the applicability of service tax to the state of Jammu and Kashmir, these services are neither taxable nor exempted. The services provided to non-taxable territory cannot be considered as exempted service. Hence in our view provisions of Rule 6 of Cenvat Credit Rules is not applicable and no service tax demand is sustainable in this matter. We also find the support in this context from the decisions of Tribunal passed on the identical issue in the matter of Ramboll Imisoft Pvt. Ltd. Vs. Commissioner of Customs & Central Excise, Hyderabad-II- 2017 (47) S.T.R. 61 (Tri. - Hyd.) wherein the tribunal held as under:

> ***5.*** *It is the case of Department that as the appellant availed credit on common input services for providing services to the State of Jammu & Kashmir and rest of the country, the appellant ought to have maintained separate accounts as the services provided in Jammu & Kashmir is exempted and services provided to rest of the country is taxable services. On failure to maintain separate accounts, the appellant is liable to reverse the proportionate credit attributable to the input services utilized for providing services in the State of Jammu & Kashmir.*
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> ***6.*** *The period of dispute is 4/2008 to 9/2010. During the relevant period the definition of output service under Rule 2(p) of Cenvat Credit Rules, 2014 is 'any taxable service, excluding the taxable service referred to in sub-clause (zzp) of Clause (105) of Section 65 of Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person as the case may be, and the expression 'provider' and 'provider' shall be construed accordingly. The definition of output service includes only the taxable services provided by a person. The definition of input service is given in Rule 2(l). Input service means any service used by a provider of taxable service for providing an output service. Undeniably, the services provided in the State of Jammu & Kashmir are not taxable services.*
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> *Sub-clause (2) of Rule 6 of Cenvat Credit Rules, 2004 is as under :-*
>
> *"Where a manufacturer or provider of output service avails CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output services, then the manufacturer or provider of output service shall maintain separate accounts for -*
>
> *(a) ……..*
>
> *(b) ……..*
>
> *The above provision speaks about the situation when the service provider is rendering output services which are chargeable to tax as well*

as exempted services. The services rendered in Jammu & Kashmir are not chargeable to service tax and therefore, are not taxable services. But this does not make them exempted services also. A service becomes an exempted service when by notification or law, the service tax payable on such service is exempted. Rule 6(2) does not apply to a situation where the service provider renders both taxable services and services which are not subject to service tax. The law is silent in this regard. The Department cannot construe the services provided to Jammu & Kashmir as exempted services and press into application, in such situations, Rule 6 of Cenvat Credit Rules, 2004. As the services provided to Jammu & Kashmir are not subject to levy of service tax, whether such services would fall into the definition of 'output service' during the relevant period is itself doubtful. As per the definition of input service, only if the service provider uses for providing output service will the service be qualified as input service. In any case, the services rendered to Jammu & Kashmir do not fall in the category of exempted services.

5.4 Another dispute in the present matter is related to the services provide by the Appellant to the SEZ units. As per the revenue since the services provided toSEZ are exempted, the appellants are not eligible for the Cenvat credit and accordingly are liable to pay the service tax in excess of 20% through PLA. There is no dispute as to the fact that the appellant had provided services to SEZ units. However on perusal of the retrospective amendment as has been brought in by Finance Act, 2012 by Section 144, we find that the Central Government has categorically stated that if any services are rendered to a unit situated in SEZ, the said services cannot be termed as exempted services. We may reproduce the said retrospective amendment.

"Amendment of Rule6 of Cenvat Credit Rules, 2004.

144. (1) In the Cenvat Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), sub-rule (6A) of Rule 6 as inserted by Clause (ix) of Rule 5 of the Cenvat Credit (Amendment) Rules, 2011, published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 134(E), dated 1st March, 2011 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in Column (2) of the Eighth Schedule, on and from the date specified in Column (3) of that Schedule, against the rule specified in Column (1) of that Schedule.

(2) Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority, any action taken or anything done or purported to have been taken or done, on and from the 10th day of February, 2006, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly effectively taken or done as if the

amendments made by sub-section (1) had been in force at all material times.

(3) For the purpose of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under Section 37 of the Central Excise Act, 1944 (1 of 1944), retrospectively, at all material times.

THE EIGHTH SCHEDULE

(See Section 144)

Provisions of Cenvat Credit Rules, 2004 to be amended	**Amendment**	**Period of effect of amendment**
(1)	(2)	(3)
Sub-rule (6A) of Rule 6 of the Cenvat Credit Rules, 2004 as inserted by Cenvat Credit (Amendment) Rules, 2011 vide Notification number G.S.R. 134(E), dated 1-3-2011 [3/2011-Central Excise (N.T.), dated 1-3-2011]	In the Cenvat Credit Rules, 2004, in Rule6, after sub-rule (6), the following sub-rule shall be inserted with effect from the 10th day of February, 2006, namely :- "(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of Service Tax, to a Unit in a SpecialEconomicZone or to a Developer of a SpecialEconomicZone for their authorized operations."	From 10th February, 2006 to 28th February, 2011.

5.5 On perusal of the above reproduced retrospective amendment, we find that vide Section 144 of the Finance Act, 2012, the amendment was given retrospective effect from 10-2-2006 to 20-2-2011. In other words, during the impugned period, there was no need for the assessee to reverse any credit taken on the inputs/input services in respect of which credit was availed for rendering of output services to SEZ units/SEZ developer.

Therefore, we hold that the demand of service tax confirmed by the impugned order is not sustainable in law.

5.6 Further, we also find that the Hon'ble High Court of Bombay, in the case of *Repro India Ltd.,* reported in 2009 (235) E.L.T. 614 (Bom.) held that the provisions of Rule6(3)(b) of the Cenvat Credit Rules are not attracted in the case of exports as Rule6(6)(v) provides an exception in the case of clearances for export. As per Section 2(m) of Special Economic Zones Act, 2005, supplying goods, or providing services, from a unit in DTA to a SEZ unit or SEZ developer is deemed as "export" and vide Section 50 of the said Act, the provisions of SEZ Act shall prevail over the provisions of other enactments. Thus supplies made to SEZ or SEZ developer amounts to "export". Viewed from this perspective also, the appellant is rightly entitled to Cenvat credit on the inputs and input services used in or in relation to rendering of output services to a unit in SEZ or to a SEZ developer. It is to be noticed that when the supply of service to SEZ is treated as export, it is necessarily in the context of supply by the DTA units and to extend all the benefits available in respect of export. In other words, the units supplying service from DTA are the 'exporters' and the service supplied by the DTA units are the 'export service'. Therefore, the definition of 'export' in the SEZ Act should be applicable in respect of supplies made by DTA units to the SEZ units. Otherwise the said definition becomes redundant. In the light of the above and in view of the overriding effect of Section 51 of the SEZ Act, the service supplies made by DTA units to SEZ units will amount to export for the purpose of all export benefits. The benefit shall include benefits available in respect of exports provided by exception to Rule6 of Cenvat Credit Rules.

5.7 Coming to the plea of the appellant regarding demands being time bar as there is absolutely no wilful misstatement, fraud or suppression of facts etc. with intention to evade the service tax. We agree with this plea of the Appellant, in each ST-3 return filed during period of dispute, the details of the service tax payable and the service tax paid through credit and through cash under TR-6challans have been given and therefore the Appellant cannot be accused of concealing the fact that during certain months, their utilization of credit for payment of service tax had exceeded the limit of 20% of the service tax payable.The facts of such credit availment and utilization were recorded in ST-3 returns and books of accounts and the same was also presented before audit. There is no findings during investigation that the

appellant was intentionally availing and utilizing Cenvat credit with *mala fide* intention. Based upon interpretation of the provisions of the Finance Act, 1994 and Cenvat Credit Rules, 2004 they *bonafidely* believed that they are entitled for the Cenvat credit and they correctly utilized the cenvat credit. In order to invoke the extended period, there should be suppression or willful misstatement with intention to evade payments of tax. The issue involved is of interpretation wherein the department is of the view that the appellant is not eligible for credit and they were liable to maintain separate accounts in order to avail credit when input services were common or non-entitlement when the services were exclusively used in exempted service. Whereas, the appellant were under the belief that the activities not being covered under exempted service, the credit is eligible even if service provided to SEZ units and clients of Jammu & Kashmir. It is on record that appellant are regularly paying the service tax. On such ground also there is nothing to establish suppression or willful misstatement with intention to evade payment of duty on the part of appellant. Apart from above facts our views are also based upon the judgments in case of *Cosmic Dye Chemical* v. *Collector of Central Excise, Bombay* - 1995 (75) E.L.T. 721 (S.C.), *Tamil Nadu Housing Board* - 1994 (74) E.L.T. 9 (S.C.), *M/s. Aditya College of Competitive Exam* v. *CCE* - 2009 (16) S.T.R. 154 (Tri.-Bang.). We are therefore of the view that demands raised against the appellant by invoking extended period is not sustainable and is time barred.

06. As per our above discussion and finding, the impugned order is not sustainable, hence the same is set aside. The appeal is allowed with consequential relief.

(Pronounced in the open court on 01.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul