<u>Complete text of the judgment on the aforesaid issue argued by APRA & Associates LLP is reproduced below: -</u>

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 50461 of 2023 (SM)

[Arising out of Order-in- Appeal No. 08/2022-23 dated 27/09/2022 passed by The Commissioner (Appeals – II), CGST, Delhi, New Delhi – 66]

M/s Elan Professional Appliances Pvt. Ltd.

645/2, Ram Farm, Near Coca Cola Godown, Zero Road, Ghitorni, New Delhi – 110 030. …… Appellant

VERSUS

Commissioner (Appeal – II), CGST, Delhi, UG Floor, EIL Annexe Building, Bhikaji Cama Place, New Delhi – 110 066. …… Respondent

APPEARANCE:

Shri Varun Gaba, Advocate – for the appellant.

Shri Gopi Raman, Authorized Representative for the Department.

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

<u>FINAL ORDER NO. 50576/2023</u>

DATE OF HEARING/DECISION: - 20/04/2023

<u>PER ANIL CHOUDHARY :</u>

Heard the parties. The issue involved in this appeal is whether the show cause notice1 has been rightly issued invoking the extended period of limitation. The period of dispute is October 2014 to June 2017. For the period ended 30 June 2017 appellant have filed their return on 23 August 2017.

2. The brief facts are that the appellant is registered with the Service Tax Department since July, 2012 providing services under the category of Management or Business Consultant Service, Market Research Agency Service, Maintenance or repair Service, erection, commissioning and installation service. Revenue audit took place in December 2019 and the Revenue noticed the following facts:-

(i) Alleged Non-payment of Service Tax amounting to Rs. 3,67,125/- on commission received for providing the intermediary services by the perusal of Rule 2 (f) of POPS Rules, 2012; and;

(ii) Alleged Excess Availment of Abatement, wherein the liability of service tax was amounts to Rs. 25,083/-; and;

(iii) Alleged inadmissible carry forward of E. Cess and S.H.E. Cess amounting to Rs. 12,062/- under the pursuance of Notification No. 22/2015- CE (NT) dated 29 October 2015; and;

(iv) Alleged wrong adjustment of liability of Service Tax under the Reverse Charge Mechanism amounting to Rs. 23,83,338/-; and;

(v) The Late Fees amounting to Rs. 5800/- on delay in filing of Returns for the respective period.

3. The appellant had provided service as inter-mediary to the receiver of service in non-taxable territory. Accordingly, was advised that as the receiver of service is located in non-taxable territory, they are not required to pay service tax. However, as pointed out by audit, the appellant have deposited the service tax of Rs. 3,67,125/- on 23 December 2019.

4. As regards the next issue regarding excess availment of abatement on the input GTA service, the appellant was rightly entitled to abatement @ 70% of the value of service. However, during the month of April 2015 and May 2015, the appellant have erroneously taken abatement @ 75%, and on this amount, the differential amount of tax liability of Rs. 21,381/-, the appellant had admitted the error and paid Rs. 21,381/- on 27.12.2019.

5. The next issue relates to utilization of Cenvat credit for payment of service tax on GTA under RCM. Learned counsel points out that admittedly GTA is an input service. Upon payment of service tax in cash, the appellant becomes entitled to Cenvat credit. The appellant admittedly have paid the service tax on GTA (input service) by utilizing Cenvat credit and have not taken Cenvat credit of such payment of tax. Thus the situation is whether revenue neutral. By virtue of provision of CGST Act, any amount paid for period prior to 1st July, 2017 by way of service tax which is available to the assessee by way of the Cenvat credit, such amount becomes refundable as such credit cannot be taken on or after 1st July, 2017.

6. The next objection of audit was inadmissible carry forward of E. Cess and S.H.E. Cess availed Rs. 3,34,550/-. I find from Notification No. 22/2015-CE (NT) dated 29.10.2015, wherein proviso has been inserted in Rule 3 (7) (b) after the 5th proviso of Cenvat Credit Rules to the effect that w.e.f. 1st June, 2015, cess received after 1 st June, 2015 can be utilized for payment of service tax on any output service. Similarly, Cenvat credit received on capital goods during financial year 2014-15 or thereafter can be utilized for payment of service tax on any output service. Further provided that cess in respect of GTA by Rail received by the provider output service or after 1st June, 2015 can be utilized for payment of service tax on any output service.

7. Prior to 1st June 2015 the position was that education cess and secondary and higher education cess credit could be utilized only for payment of similar cess on output service. Thus, I find that revenue has mis-conceived in its objection that the balance of education cess and secondary cess as on 1st June 2015 has lapsed.

8. Assailing the impugned order-in-appeal, Counsel has argued that they had taken the ground before the court below that under the facts and circumstances the extended period of limitation is not invokable. This ground has been rejected by the court below. Learned counsel urges that admittedly the appellant have maintained proper books of accounts and have filed returns, though delayed by few days. Under such facts and circumstances the grounds namely willful mis-statement, suppression of facts, etc. is not available to Revenue.

9. Learned Authorized Representative for the Revenue relies upon the impugned order.

10. Having considered the rival contentions, I find that the issues involved in the SCN are wholly interpretation in nature. Further I find that out of the demands raised of tax, the major part of demand in respect of GTA service, the situation is revenue neutral as the appellant is entitled to Cenvat credit on payment of service tax in cash. Further, I find that the only allegation in SCN for invocation of extended period of limitation is that the afore-mentioned omissions came to light in the course of audit, but for which tax would have escaped. I find that such allegations do not stand, as admittedly appellant have deposited the tax and accepted the audit objection, prior to issue of SCN. Accordingly, I hold that extended period of limitation is not available to Revenue for issue of SCN on 30.04.2020.

11. In view of above findings, the appeal is allowed with consequential benefit. Impugned order is set aside.