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

REGIONAL BENCH- COURT NO. 3

SERVICE TAX APPEAL NO. 11522 of 2015-DB
(Arising out of OIO-SUR-EXCUS-001-COM-008-15-16 Dated 18/06/2015 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Bharat Sanchar Nigam Ltd **........Appellant**
Through Its Principal General Manager,
2nd Floor, Door Sanchar Bhavan,
Karimabad, Ghoddod Road,
SURAT, GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Surat-i **........Respondent**
NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT,GUJARAT-395001

APPEARANCE:
Shri Randhir Rajpurohit, Advocate appeared for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. 12794/2024

DATE OF HEARING:18.10.2024
DATE OF DECISION: 25.11.2024

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in providing the telephone service and internet service for which they have provided telephone instrument and internet modem to their customers without charging the cost thereof. However, a refundable security deposit was taken from the customers without interest which is refundable at the time of surrender of their connection. The appellant have availed the Cenvat credit in respect of such telephone instrument and internet modem. The department's case is that since the appellant have taken the security deposit, the same is tantamount to cost of telephone instrument and internet modem, consequently, the appellant is not entitled for the Cenvat credit on the said inputs.

2. Shri Randhir Rajpurohit, Ld. Counsel appearing on behalf of the appellant submits that the security deposit is collected from the customer not as a cost of telephone instrument and internet modem but it is only to safeguard the future revenue loss, if any occurs due to nonpayment of telephone/ internet service bill by the customers. Therefore, the security deposit is not collected towards the cost of telephone and internet modem. Therefore, the Cenvat credit cannot be denied. He placed reliance on the following judgments:-

- M/s ATS Township Pvt. Ltd. V/s Commissioner Central GST, Noida
- Marwadi Shares & Finance Ltd V/s C.C.E. & S.T. - Rajkot
- M/s Mahanagar Telephone Nigam Limited V/s CCE (Large Taxpayer Unit)

3. Shri Himanshu P Shrimali, Ld. Superintendent (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the Cenvat credit on telephone instrument and internet modem per se is admissible to the appellant as the same is used for providing the taxable service that is telephone service and internet modem. However, the department has denied the Cenvat credit only on the ground that since the cost of the telephone instruments and internet modem was collected by the appellant from their customers. We find that in this regard, it is relevant to go through the terms and conditions, the relevant terms and conditions for the agreement of telephone/ internet connection is reproduced below:-

> *"In BSNL Customer Application Form Terms and conditions Sr. No. 4.10 it is clearly mentioned that:*
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> *"Where a security deposit has been paid, BSNL is entitled to retain it and apply it as decided in full or partial satisfaction of any sums due from the customer to BSNL any time. At the end of the agreement period, provided all sums payable to BSNL have been duly paid, the balance (if any) of the deposit or fee will be repaid to the customer on fulfilment of such conditions as may be intimated by BSNL. No interest will be paid on the*

deposit. BSNL reserves the right to adjust the security deposit of the BSNL connection of one member of a family against the bill of the other BSNL connection(s) issued by other family member(s)."

4.1 From the above condition, it is absolutely clear that the security deposit is not a sale proceed of telephone instrument/ internet modem, whereas, the security deposit is for the purpose of adjustment of any dues against the bill of service charges. Therefore, the department has made a serious error on the face of the record contending that the security deposit is collected as cost of telephone instrument and internet modem. It is also observed that the security deposit is refundable amount which means if there is no dues against the customer at the end of the agreement period such security deposit shall be refunded to the customer. Therefore, by any stretch of imagination, it cannot be construed that the security deposit is towards the sale proceed of telephone instrument/ internet modem. It is also observed that in the appellant's own case for a different period, the Deputy Commissioner, Service Tax, Division-IV, Surat-I vide Order No. SRT-I/ST-Div-IV/ADJ/SKS/03/2016-17 dated 28.07.2016 dropped the demand on the same issue by giving the following findings:-

"In the show cause notice, it is also alleged that the assessee has taken security deposits against the telephone instruments which are refundable when the instruments are surrendered back. As the defence submitted by the assessee, security deposits are not against the telephone instruments but for safeguarding any future revenue losses. In support of their claim, they have provided copy of their tariff structure in which it is mentioned that security deposit is Rs. 500/- for local + STD facility and Rs. 2000/- if ISD facility is also availed. They are charging such security deposits even in those cases where they selling CLIP telephone sets separately. Thus, it is observed that amount of security deposit is based on the facility provided and relative risk of revenue involved. It has nothing to do with supply of telephone instruments. On the other hand, revenue failed to provide any documentary evidence that security deposit are taken against the supply of telephone instruments. Thus, in absence of any documentary evidence, I do not find any ground to accept the contention of the revenue that telephone instruments are inputs and security deposits are against the supply of such instruments. Hence, I agree with the contention of the assessee that the Telephone Instruments supplied by them are Capital Goods", not inputs and refundable security deposit has no relation with the supply of telephone instruments".

Though, above finding not binding on us however, it has persuasive value.

As per above discussion and finding, we are of the clear view that the revenue has wrongly denied the Cenvat credit in respect of telephone instrument/ internet modem.

5. Accordingly, the demand is not sustainable. The impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 25.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi