CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.71096 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1957-17-18 dated 27.03.2018 passed by Commissioner (Appeals) Central Tax, Noida)

M/s Allied Infotainment Distribution Pvt. Ltd., ...**Appellant**
(FC-23, Sector-16A, Film City, Noida-201301)

VERSUS

Commissioner of Central Tax, Noida ....**Respondent**
(CGST, Noida)

APPEARANCE:

Shri Utkarsh Malviya, Advocate for the Appellant
Shri Sandeep Pandey, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70282/2023

DATE OF HEARING : 10 November, 2023
DATE OF DECISION : 10 November, 2023

P. K. CHOUDHARY:

The present appeal has been filed assailing the Order-in-Appeal passed by the Learned Commissioner (Appeals), Central Tax, Noida. The Books of Accounts of the Appellant were subjected to audit and it was observed that the Appellant had taken inadmissible Cenvat credit of Rs.24,66,850/- against the invoices which were addressed to other than registered premises of the Company. On being pointed out by the Audit party, the Appellant debited Rs.18,67,866/- vide JV No.135 dated 26.08.2014 and deposited Rs.5,98,984/- vide challan No.10022 dated 30.08.2014. Show cause notice dated 19.01.2017 was issued to demand and appropriate the alleged inadmissible Cenvat credit. The Adjudicating Authority vide Order-in-Original dated 30.03.2017 confirmed the demand as proposed in the show cause notice and appropriated the amount already debited i.e. Rs.18,67,866/- vide JV No.135 dated 26.08.2014 and deposited Rs.5,98,984/- vide challan No.10022 dated 30.08.2014 respectively. However, the penalty of Rs.3,70,028/- @ 15% of the demand confirmed has been imposed under proviso to Section 78 (1)(i) read with Rule 15(3) of Cenvat Credit Rules, 2004. On appeal, the learned Commissioner (Appeals) rejected the appeal. Hence, the present appeal before the Tribunal.

2. The learned Advocate appearing on behalf of the Appellant reiterates the grounds of appeal and submits that Cenvat Credit Rules nowhere mandates registration as pre condition for availing Cenvat credit. He vehemently argued that there is no provision in Law that Cenvat credit is not available to unregistered manufacturer. It has been decided in plethora of cases that assessee is eligible to avail Cenvat Credit even prior to registration. In support of his submissions he relied upon the following decisions of the Tribunal :- (i) in the case of J. R. Herbal Care India Ltd. vs. Commissioner of Central Excise, Noida 2010 (253) E.L.T. 321, (ii) Raaj Khosla and Co Pvt. Ltd. vs. Commissioner of Service Tax, Delhi 2008 (12) S.T.R. 627 (Tri.-Del.).

3. The learned Departmental Representative justified the impugned order.

4. Heard both sides and perused the appeal records.

5. We find that the dispute in the present appeal is regarding availment of Cenvat credit against invoices which were addressed to premises other than the registered premises of the Appellant. We observe that the Appellant has deposited interest of Rs.6,70,000/- vide challan No.00168 dated 20.02.2017 as and when intimated by the Service Tax Department.

6. We find that the issue is no more *res integra* and facts of the present case are squarely covered by the decision of the Tribunal in the case of Raaj Khosla and Co Pvt. Ltd. (Supra). In the above case credit was taken in respect of invoices which were addressed to non registered premises. Later assessee amended registration certificate to include the premises which

were not registered. The Tribunal held that since amendment has been made to the registration certificate, credit cannot be denied to the Appellant. Relevant portion is mentioned below:-

> *"6. We find that in case, duty paying document were in the name of the appellant, only objection of revenue is that the address mentioned in the invoices is not registered with Revenue Authorities. We find the registration certificate was subsequently amended and included the address mentioned in the invoices with retrospective effect. In these circumstances order whereby credit was disallowed on this ground is set aside and the appeals of the appellant in this regard are allowed."*

7. We further observe that the Tribunal in the case of BSNL vs. Commissioner of Central Excise, Salem 2012 (28) S.T.R. 624 observed that substantial benefit should not be denied on account of procedural defects of minor nature as pointed out by the Revenue.

> *"6. We have considered arguments on both sides. Firstly, we notice that if the DGM (Projects), Salem followed the procedure of getting registered as "input service distributor" and then distributed the credit to SSA Salem there was nothing wrong in the credit availed by the appellant. Basically the issue involved is one of procedures and not a case of mis-utilization of any ineligible credit. Further, we note that there has not been any distribution of credit involved because of the entire credit taken at one location was taken on one office making it easy for Revenue to conduct verification as may be necessary. The argument of the appellants that the premises where the equipments are used belong to BSNL and not to any other party and it is also used for completion of services originating from Salem also are strong arguments in favour of the appellants. Since* ***Modvat credit is a substantial benefit, we are of the view that the impugned credit should not be denied on account of procedural defects of minor nature as pointed out by the Revenue. Therefore, we hold that the impugned***

order is not maintainable. So we set aside the order and allow the appeal."

8. It is our considered view that the Cenvat credit scheme was introduced to avoid the cascading effect of any indirect tax and service tax in particular, for making services more competitive in domestic as well as in international market. Being a Value Added Tax, Cenvat credit is necessary so that the end user does not pay taxes on the price which is already included in the taxes paid at multiple stages. Hence, denial of Cenvat credit on the basis of some procedural lapses is defeating the very intent of the statute. We also find support from the Tribunal's decision in the case of Commissioner of Service Tax, Noida vs. Birlasoft (India) Ltd., Final Order No.71311/2017 dated 03.11.2017 relevant portion is reproduced below :-

"2. The brief facts of the show cause notice are that pursuant to audit it was noticed that during the period 2007-08 to March, 2010 it appeared that appellant have taken Cenvat credit of Rs.26,24,834/- on the basis of invoices issued by service providers under the head renting of immovable property in respect of their head office and branch office located at New Delhi and D-196, Sector 63, Noida, respectively, before 9 February, 2009.

3. Accordingly, the appellant vide show cause notice dated 02 September, 2013 was required to show cause as to why the Cenvat credit of Rs.26,24,835/- be not disallowed and recovered with interest and further penalty was proposed. The SCN was adjudicated by the Additional Commissioner being Order-in-Original dated 29 December, 2014 and the proposed demand was confirmed with interest and also equal amount of penalty under Rule 15 of CCR, 2004. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order was pleased to allow the appeal in favour of the respondent-assessee.

4. Being aggrieved the Revenue is in appeal before this Tribunal. Heard the parties.

5. Having considered the rival contentions, I find that it is not in dispute that the appellant have been using the premises in question for their business purposes. Admittedly, the premises at Barakhamba Road, is the Corporate Office of the respondent at New Delhi. Secondly the Branch Office premises at D-196, Noida, which were taken subsequently on rent in 2008, that is after the Service Tax registration including Centralized Registration in the year 2007. Further, the learned counsel appearing for the appellant have led evidence before me that they were rendering taxable service from the premises at D-196, Sector 63, Noida by producing sample invoice dated 08 September, 2008, wherein bill have been raised for consultancy service and also service tax have been charged. Further, I find from the amended Registration Certificate for Centralized Registration being Form No. ST-2, dated 05 February, 2009, that the two premises in question have been included in the Centralized Certificate. The learned counsel also produced copy of Form No.18 under the Companies Act, wherein they have given notice of situation of the registered office to the Registrar of companies, being located at Birla Tower 8th Floor, 25 Bara Khamba Road, New Delhi-I."

9. In view of the above discussions the impugned order cannot be sustained and is therefore set aside. The appeal filed by the Appellant is allowed with consequential benefits as per law.

(Operative part of the order pronounced in open court)

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

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS