IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70497/2017-CU[DB]

(Arising out of Order-in-Original No. 70/COMMISSIONER/NOIDA II/2016-17 dated 31/03/2017 passed by Commissioner of Central Excise, Noida-II)

M/s Tv 18 Broadcast Ltd.

(Formerly Known as Television Eighteen India Ltd.) **Appellant**

Vs.

Commissioner of Central Excise, Noida-II **Respondent**

Appearance:

Shri Vishal Agrawal & Shri Akshit Malhotra, Advocates for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/07/2018
Date of Decision : 27/07/2018

FINAL ORDER NO-72202/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 70/COMMISSIONER/NOIDA II/2016-17 dated 31/03/2017 passed by Commissioner of Central Excise, Noida-II.

2. The brief facts of the case are that the appellants were providing taxable services of Broadcasting Services, Video Tape Production Services and Intellectual Property Rights

Services and were having centralized service tax registration. During the audit of record of the appellant for the period from April, 2005 to February, 2009 it was observed by revenue that the appellant had availed Cenvat credit of Rs.18.01 crores on the basis of challans issued by Input Credit Distributor situated in Delhi and that the said challans were not serially numbered and were not having information as required under Rule 4A(2) of Service Tax Rules, 1997. Therefore, it appeared to revenue that the appellants were not eligible to avail the said Cenvat credit of Rs.18.01 crores. Therefore, appellants were issued with a show cause notice dated 07.08.2009 proposing to deny the said Cenvat credit. Appellant submitted their reply dated 15.02.2010 to the said show cause notice. The submissions by the appellant before the Original Authority, as recorded in impugned order are reproduced bellow:-

“A. The Noticees submit that all the allegations made in the Show Cause Notice are incorrect in law as well as on facts. The Noticees deny all the allegations made in the Show Cause Notice. Therefore, the Show Cause Notice is liable to be dropped on this ground.

B. 1 In Para 2 of the Show Cause Notice it is alleged that the notices had availed Cenvat credit on the basis of challans issued by input service distributor which were not serially numbered and did not contain information as required under Rule 4A(2) of the Service Tax Rules, 1994. The second part of the allegation, that the challans not having information as required under Rule, is vague. The challans issued by the input service distributor were having all the information as required under Rule 4A (2) except the fact that these challans were not serially numbered. Hence, the second part of the allegation is not sustainable. Therefore, the notices proceed as if the only ground for denial of Cenvat credit is that the challans issued by input service distributor were not serially numbered.

B. 2 The Noticees have submitted revised ISD challans which are serially numbered and are in accordance with Rule 4A of the Service Tax Rules, 1994. Therefore, the Noticees submit that procedural lacuna, if any, has already been rectified. The Noticees submit that ISD challans not being serially numbered is a procedural lacuna which has already been rectified. Therefore, the credit of Service Tax paid on the aforesaid service cannot be denied to the Noticees. Therefore, the Show Cause Notice is liable to be dropped on this ground alone."

They further pleaded that substantive benefit cannot be denied for procedural lapses and also that deficiencies were removed by them. The Original authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant. He has submitted that the Original authority in para-5.3 of the impugned order has accepted that the appellant on 26.06.2012 submitted Copies of rectified Challans and summary & detail statement of input credit transferred during April, 2005 to February, 2009 and Copies of ISD

returns filed during April, 2005 to March, 2008. He further submitted that the only allegation in the show cause notice for denial of said credit was that the challans were not serially numbered and that it is recorded in the Order-in-Original that subsequently the rectified challans were submitted. He further submitted that it was only a procedural deficiency and that there were no allegations in the show cause notice that the input services were not received by the appellant nor the input services were not eligible for availment of Cenvat credit. He has further submitted that it is a settled law through the ruling by Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs Dashion Ltd. reported at 2016 (41) STR 884 (Guj) that substantive benefit of admissibility of Cenvat credit cannot be denied for procedural deficiencies. He has further submitted that CBEC vide Circular No.1063/2/2018-CX dated 16.02.2018 has informed that the said decision of Hon'ble Gujarat High Court has not been appealed against.

4. Heard the learned A.R. for revenue who has submitted that through the said circular said ruling by Hon'ble Gujarat High Court has been communicated to have been accepted.

5. We have carefully gone through the case records and submissions from both the sides. On perusal of show cause notice, it is very clear that show cause notice did not elaborate on any deficiency in the said challans as compared

to the requirement under the said Rule 4A(2), it only pointed out that the challans were not serially numbered. Para 5.3 of the impugned order has recorded that through letter dated 26.06.2012 appellant has submitted copies of rectified challans. We find that there were no allegations in the show cause notice that the services were not received by the appellant nor the services were not eligible to avail Cenvat credit nor the service tax was not paid by service providers. We find that the only objection was that the challans were not serially numbered. We also find that the Order-in-Original recorded that rectified challans were submitted. We, therefore, relying on the ruling of Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs Dashion Ltd. (supra) hold that the impugned order is not sustainable in law.

6. In view of the same, we set aside the impugned order and allow the appeal filed by the appellant.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

akp