CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Service Tax Appeal No.71260 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1947-17-18 dated 27.03.2018 passed by Commr.(Appeals) of Central Excise, Noida.)

M/s. Prime Telecom Ltd.
(B-215, Phase-II, Noida,
Uttar Pradesh-201304)

...Appellant

VERSUS

Commr. of Central Excise, Noida **.....Respondent**
(C-56/42, Sector-62, Noida)

APPEARANCE

Absent on Call for the Appellant (s)
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

HON'BLE MRS. ARCHANA WADHWA, MEMBER(JUDICIAL)
HON'BLE SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 71249 / 2019

DATE OF HEARING : 24 June 2019
DATE OF DECISION : 3 July 2019

MRS. ARCHANA WADHWA :

On matter being called neither anybody appeared nor is there adjournment request in spite of the Notice of hearing having been sent well in advance. Accordingly we have heard Shri Pawan Kumar Singh, learned Supdt. (A.R.) appearing on behalf of the Revenue and have gone thorugh the impugned order.

2. It is seen that the appellant is a manufacturer as also a service provider. They were also availing the Cenvat credit of duty paid on

inputs and input services. The said credit availed by them was being utilised for payment of duty of excise as also for payment of Service Tax on the output services.

3. By entertaining a view that the input and input services credit availed by the appellant can be utilised only for payment of duty of excise on the manufactured product and cannot be utilised for payment of Service Tax on output service, proceedings were initiated by issuance of a show cause notice dated 06.10.2016 proposing to deny the credit of Rs.51,95,000/- availed and utilised during the period April 2011 to March 2015. The said show cause notice stand adjudicated by the Additional Commissioner confirming the demand along with confirmation of interest and imposition of penalty. The order of the original adjudicating authority stands confirmed by Commissoiner(Appeals). Hence the present appeal.

4. On going through the impugned order of Commissioner(Appeals) we find that he has observed that the appellant was acting in dual capacity of manufacturer as also output service provider. The input credit availed on various inputs and input services, which are relatable to the manufacturing activities only, can be utilised only for payment of duty in respect of the manufactured goods. The same cannot be utilised for payment of Service Tax. By observing so he has held againstthe assessee on merits as also on limitation.

5. We note that in terms of the provisions of Rule 3 of Cenvat Credit Rules, 2004, the manufacturer or producer of final product or provider of output services is entitled to take the credit of duty paid on various inputs as also input services. Further in terms of sub-rule 4 of the said Rule 3 manner of utilization of Cenvat credit is prescribed. In terms of the said sub-rule 4, the credit availed by an assessee can be utilised for payment of duty of excise on any final product or payment of Service Tax on any output service. There is no distinction in the said sub-rule that the credit relatable to the input service used for manufacture shall be used only for payment of duty on the manufactured goods and the credit availed in respect of input services used for providing output

services would be used only for payment of Service Tax. In the absence of any such distinction made in the Cenvat Credit Rules, 2004, the reasoning of the authorities below cannot be upheld.

6. Apart from merits of the case we also note that the demand stands raised against the appellant by invoking the longer period of limitation. Admittedly the appellant was filing all the requisite returns with the Revenue indicating the credit earned by them and so utilised. The Revenue has not referred to any evidence on record to show that there was any *mala fide* on the part of the assessee, except the fact that such availment and utilization was to be reflected in ER-1 return and the same should have been reflected separately in ST-3 returns. Otherwise we note that there is no dispute about the fact of availment of credit and its utilization having been reflected in the returns. In such a scenario, we find no reasons to invoke the extended period of limitation.

7. In view of the above, the appeal is allowed on merits as also on limitation.

(Order pronounced in the open court on 03/07/2019.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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