Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
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Appeal No. ST/61579/2018

(Arising out of OIA No. CHD-EXCUS-001-APP-12-113-18-19 dated 11.06.2018 passed by the Commissioner (Appeals) of Central Goods and Service Tax-Chandigarh)

M/s Bharat Sanchar Nigam Limited : Appellant (s)

Vs

CCE & ST- Chandigarh-I : Respondent (s)

Represented by:
For Appellant (s) : Shri Suresh Goyal, CA
For Respondent (s): Shri Tarun Kumar, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)

Date of Hearing/Decision: 27.02.2019

ORDER No. A/60215 / 2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order on various grounds. Therefore, all are dealt separately.

2. The facts of the case are that the appellant is a public sector organisation and providing telecom services. The appellant is having various units in the state of Himachal Pradesh and cenvat credit sought to be denied on the ground that the appellant cleared capital goods as such without reversal of cenvat credit. Therefore, cenvat credit to the tune of Rs. 9,76,387/- was denied. The appellant has contested the said issue on the ground that the appellant have shifted capital goods from their own unit to the another unit, in that circumstances, relying on the decision of this Tribunal in their own case reported in 2013 (1) TMI
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142 – CESTAT Chennai, they are not required to reverse the cenvat credit as the appellant themselves are shifting goods from one unit to the another unit. Therefore, they will not any impact for reversal of cenvat credit and taking cenvat credit at the unit where the units have been transferred the goods and it is revenue neutrality.

3. On this issue, I find that as the appellant are transferring capital goods of their one unit to another unit it means the appellant is clearing goods for themselves only, in that circumstances, the appellant is not required to reverse cenvat credit as held by this Tribunal in their own case reported in (supra) wherein this Tribunal observed as under:-

> "*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 wron in the credit availed by the appellant. Basically the issue involved is one of procedures and not a case of mis-utilisation 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 in one office making it easy for revenue to conduct verification as may be necessary. The arguments 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 allowed the appeal."*

Therefore, I hold that cenvat credit of Rs. 10,62,700/- is not required to be reversed. For that, no penalty is imposable on the appellant.

4. The show cause notice also proposed to recovery in terms of Rule 6 (3)(C) of Cenvat Credit Rules, 2004 on the ground that the appellant is providing taxable as well as exempted service, therefore, period prior to 01.04.2008 the appellant is restricted to avail cenvat credit upto 20% of the cenvat credit available in their cenvat credit account whereas during the period February 2008, the appellant has utilized more than 20% of the cenvat credit account for

payment of service tax. Therefore, to that extent they are required to pay the said amount.

5. It is fact on record that in the month of February 2008 the appellant utilized cenvat credit account more than 20%, but, in the subsequent month i.e. March 2008 the appellant has not utilized 20% of the cenvat credit available in the cenvat credit account. If utilization of both months is taken together, in that circumstances, the appellant has utilized only 20% of the cenvat credit lying in their cenvat credit account. In that circumstances, I hold that no demand is sustainable against the appellant on this issue. Consequently, no penalty is imposable.

6. After 01.04.2008, if the assessee is providing taxable as well as exempted services, in that circumstances, the assessee is required to reverse proportionate cenvat credit attributable to exempted taxable services or required to pay 8/6 % of the value of exempted services. In this case, it is admitted fact that the appellant has provided taxable as well as exempted services or non taxable services and same has been shown in their ST-3 returns, but, neither proportionate cenvat credit was reversed or 8/6% of the value of exempted service was paid. Therefore, the demand was raised against the appellant by invoking the extended period of limitation.

7. The appellant contested that as they were under bonafide belief and declared in their ST-3 Returns about non utilization of cenvat credit for payment of 8/6% of value of exempted services in their returns. Therefore, the extended period of limitation is not invokable.

8. I find that in this case, the appellant as claiming bonafide belief that on non taxable/exempted services, they are not required to reverse the service tax,

as same has shown in their ST-3 returns. This cannot be the reason for bonafide belief when law is clear from 01.04.2008. As on 01.04.2008 law has been changed for the period of availment of cenvat credit restricted to 20%, but, post on 01.04.2008 law has been changed and they are required to reverse the proportionate cenvat credit or to pay 8/6% of the value of the exempted services. In that circumstances, bonafide of the appellant are absent. Therefore, the demand is rightly confirmed by invoking the extended period of limitation for non reversal of proportionate cenvat credit of exempted service or payment of 8/6% of the exempted services alongwith interest.

9. Considering the fact that the appellant is a public sector undertaking and being a mistake of the officers of the organisation should not be penalized as no benefit is going to arise to the public sector undertaking. Therefore, penalty against the appellant on this account is set-aside.

10. With these terms, the appeal is disposed of.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.