CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

Appeal No.ST//60418/2021-Ex

[Arising out of OIA No.35/ST/CGST-APPEAL-GURUGRAM/SG/2021-22 dated 9.7.2021 passed by the Commissioner (Appeals) of CGST, Sector32, Gurugram]

M/s.Sistema Shyam Teleservices Ltd. :Appellant (s)
(Plot No.334, Udyog Vihar, MTS Tower, Phase-IV, Gurugram-122001))

Vs

Commissioner of CGST, Gurugram :Respondent (s)
(Sector 32, Gurugram)

APPEARANCE:
Shri Vinak Mathur, Advocate for the Appellants
Ms.Geetika, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of Hearing/Decision:01.11.2021

FINAL ORDER No.60927/2021

***Per :*Ashok Jindal**

The appellant is in appeal against the impugned order wherein the demand of interest has been confirmed alongwith penalty.

2. The facts of the case are that the appellant is a service provider. They procured certain capital goods during the period October, 2008 to September, 2009 and availed credit thereon. An audit was conducted in March, 2010, it was pointed out that they have taken excess credit irregularly on the capital goods, immediately thereafter the appellant reversed credit on 31.3.2010 but no interest was paid. Thereafter, several letters were written for payment of interest but the appellant did not pay interest. In that circumstance, a show cause notice was issued to the appellant on 10.12.2012 to demand interest
~~~~~

by invoking extended period of limitation and the matter was adjudicated and confirmed the demand of interest and penalty is also impose. Against the said order, the appellant is before me.

3. Ld.Counsel for the appellant submits that although the credit was taken but the same was not utilized and remained unutilized. The credit was reversed by the appellant on pointing out by the audit team in March, 2010 itself. Therefore, they were not required to pay interest and no penalty is imposable. In support of his contention, he relied on the decision of this Tribunal in the case of GTL Infrastructure Limited vs. CST, Mumbai-2015 (37) STR 577 (Tri.-Mum).

4. It is his submission that the audit was conducted in March, 2010 and reversed the credit, therefore, show cause notice dated 10.12.2012 is barred by limitation.

5. On the other hand, Ld.AR opposed the contention of Ld. Counsel and submits that the issue of availability of inadmissible credit and payment of interest thereon during the intervening period has been decided by Hon’ble Apex Court in the case of Ind-Swift Laboratories-2011 (265) ELT 3 (SC) which has been followed in the case of Sundaram Fasteners Limited-2014 (304) ELT 7 (Mad.). She also drew my attention that after completion of hearing, the appellant paid interest and admitted interest liability. In that circumstance, they are liable to pay interest and penalty has rightly been imposed. To support her contention, she relied on the decision of this Tribunal in the case of Subhash Chand Surana vs. CCE, Indore- 2019 (27) GTSL.518 (Tri.-Del.).

6. Heard the parties and considered the submissions.

7. The facts of the case are not in dispute that the audit was conducted in March, 2010 and inadmissible credit was reversed on 31.3.2010. Thereafter a show cause notice was issued to the appellant on 10.12.2012 by invoking the extended period of limitation.

8. After hearing the appellant, the sole issue arise is whether the interest is payable by the appellant on reversal of credit which was taken but not utilized.

9. The Ld.AR relied on decision of Hon'ble Supreme Court in the case of Ind-Swift Laboratories (supra) to say that they are liable to pay interest. That issue was examined by the Hon'ble Karnataka High Court in the case of Bill Forge Pvt.Ltd.-2012 (279) ELT 209 (Kar.) in which case the Hon'ble High Court has examined the issue and held that although the credit taken but the same remained unutilized, in that circumstance, no interest is payable. But the said issue has been considered in the case of Sundaram Fasteners to say that the interest is payable. As there are contradictory decisions of the Hon'ble High Courts after the decision of Hon'ble Apex Court. In that circumstance, the issue is to be decided by this Tribunal independently.

10. This Tribunal in the case GTL Infrastructure Limited (supra) has taken a view that in case where the credit is taken earlier has been reversed without utilizing the same, in that circumstance, no interest is payable. Therefore, in view of the decision of this Tribunal, I hold that the appellant is not liable to pay interest.

11. Another argument advanced by Ld. AR that the appellant has admitted interest liability vide letter dated 1.10.2015 wherein they have paid interest. I have gone through the said request letter dated 1.10.2015:-

"

To,

The Assistant Commissioner,

The office of the Assistant Commissioner of Service Tax

Division-XVII (Delhi IV),

Cyber House, Sector - 32

Gurgaon,

Dear Sir,

Sub : Personal Hearing of SSTL against show cause Notices

We, M/s Sistema Shyam Teleservices Limited ('SSTL' or 'the Company') having Centralised Registration No. AACCS1709HST003, in continuation to personal hearing (PH) attended on 02092015 in regard to Show Cause Notice C. No. V(H)Adj.1/ST/307/2010/1669-71 dated 14.10.2011, here by enclosed Challans (Annexure '1') for payment of Interest as per details given below :

S.No	Particulars	Amount	Challan No.	Challan Date
1	Interest	1,72,256	05595	05/08/2015

You are requested to please consider the same in reference to above show cause notice and drop the proceedings accordingly.

We assure our full cooperation and would glad to provide any further clarification/information in this regard. "

12. As per the said letter, although the appellant has paid interest, he has made request for dropping proceedings initiated by show cause notice. The facts of the case of Sundaram Fasteners (supra) is not applicable to the facts of this case.

13. In view of the above, no interest is paybale and no penalty can be imposed on the appellant.

14. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(dictated &Pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

mk