IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/660/2012

(Arising out of Order-in-Appeal No.169/2012 dated 31.8.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. SAT Vision Network | Appellant

Vs.

Commissioner of GST & Central Excise,
Coimbatore | Respondent

Appearance

Shri R. Balagopal, Consultant for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **25.02.2019**

Final Order No. **40373 / 2019**

Per Bench

The appellant was engaged in cable operator service. On investigation, it was found that when compared to the amount paid by cable operators to the MSO, the service tax paid by cable operators was far below the actual tax payable. It was found that the appellant had not discharged the correct service tax for which show cause notice was issued for the period

August 2002 to September 2005. After due process of law, the original authority confirmed the demand of Rs.3,04,484/- along with interest and also imposed penalty under sections 77 and 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Shri R. Balagopal, consultant appeared and argued the matter. He submitted that the appellant is accepting the liability, even though they had contested the quantification of demand before the authorities below. He submitted that the appellant would be eligible for the CENVAT credit in respect of the amount paid to SCV who is the MSO who had provided the signals, link to the appellant herein. It is therefore pleaded by him that the matter may be remanded to the original authority to give the appellant an opportunity to furnish evidence with respect to the eligibility of CENVAT credit on the input service. The consultant also pleaded to set aside the penalties. He submitted that out of the demand of Rs.3,04,484/-, they had already paid an amount of Rs.1,48,461/-.

3. The ld. AR Ms. Usha Devi supported the findings in the impugned order. She submitted that the appellant had not furnished any evidence to show the amount collected by them as well as payment of service tax. The quantification of demand and the penalties imposed are legal and proper.

4. Heard both sides.

5. The appellant has submitted that they are not contesting the demand of service tax or the interest thereof. The only prayer is to give them the adjustment of CENVAT credit in respect of service tax paid to the intermediary MSO who were supplying the signals and link to them. We find that the said request is tenable since the appellant would be eligible for CENVAT credit of the service tax paid to the MSO. However, the appellant has to furnish documentary evidence to show that they have paid the service tax to the MSO. For this purpose, we remand the matter to the adjudicating authority who shall look into the plea of adjustment of CENVAT credit for the amount that has to be paid by the appellant.

6. In respect of the penalty, the ld. consultant has submitted that there was rivalry between different cable operators and most of the customers did not pay up the amount for which reason they could not discharge the service tax. Further, if they are eligible for CENVAT credit and the same would be eligible for adjustment towards the demand. The appellant has paid up substantial amounts. For these reasons, we hold that the penalties imposed are unwarranted and requires to be set aside which we hereby.

7. From the above discussions, the matter is remanded to the adjudicating authority for the limited purpose of granting the

benefit of CENVAT credit on the basis of the documents furnished by the appellant. The penalties are set aside in toto. The appeal is partly allowed, in above terms, with consequential relief, if any as per law.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**) Member (Technical)	(**Sulekha Beevi C.S.**) Member (Judicial)

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