

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50294 of 2021-SM

(Arising out of order-in-appeal No. DDN/EXCUS/000/APP/126/2020-21 dated 12.10.2020 passed by the Pr. Commissioner (Appeals), Central Goods & Service Tax, Dehradun).

Uttaranchal Cable Network

1, Raja Road, Dehradun
Uttarakhand-248001.

Appellant

VERSUS

**Commissioner, Customs, Central
Excise & Service Tax**

E-Block, Nehru colony
Haridwar Road
Dehradun-248001 (Uttarakhand).

Respondent

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51902/2021

DATE OF HEARING/DECISION: 13.10.2021

ANIL CHOUDHARY:

The appellant is in appeal against disallowance of adjustment of demand of service tax, relating to the period prior to 30.06.2017, out of the cenvat credit lying to their credit as on 30.06.2017.

2. Brief facts of the case are that the appellant is in the business of 'Cable Operator' service. The appellant was registered under the Service Tax regime. However, they did not chose to carry forward or to migrate cenvat credit to the GST regime, being the closing balance as on 30.06.2017. Pursuant to carrying an examination of the data of the appellant on the ACES software, it appeared to Revenue that appellant have mis-declared their turnover and furnished incomplete information in their ST-3 returns, with intent to evade payment of service tax. It also appeared that though the appellant has taken credit, but some of the documents are not in their possession for support. Such facts came to the notice only in the course of enquiry and correspondence by the Department. Accordingly, appellant was required to show cause by notice dated 03.04.2018, as to why not the amount of service tax of Rs. 15,39,919/- be demanded being service tax short paid for the period 2014-15 to 2015-16 under the proviso to Section 73(1). Further, proposed to appropriate amount of Rs.4,42,007/-, which has been deposited. Further interest as well as penalty was proposed under Section 78. It was further proposed to disallow cenvat credit of Rs. 66,542/- as not supported by documents. Further, interest was proposed on cenvat credit of Rs.2,97,289/- from the date of taking credit to the date of issuance of cenvatable invoice. It was further proposed appropriation of Rs. 1,28,700/-, deposited towards interest.

3. In response to the show cause notice, the appellant filed reply dated 24.08.2018. They did not contest the demand of service

tax as alleged to be short paid. They further agreed to the amount of gross receipt at Rs.96,29,000/-, as turnover less declared for the period 2015-16.. They thus agreed to the short payment of service tax of Rs.15,39,919/-. The appellant also pointed out the amount of tax and interest already deposited, as follows:-

Challan No.	Date	Amount (Rs.)	Nature
17165	25.04.2017	1,43,707	Service Tax
00337	16.01.2018	2,98,300	Service Tax
00337	16.01.2018	1,28,700	Service Tax interest

The appellant further submitted calculation of interest on the short payment of tax, and also further deposited interest of Rs.2,29,300/- by Challan No. 00107 dated 24.08.2018.

4. Appellant further requested that the amount of cenvat credit of Rs. 14,30,166/-, lying in their favour (credit) as on 30.06.2017, may be allowed to be adjusted against the demand payable, specifically pointing out that this amount has not been carried forwarded to GST in Form TRAN-1 (not filed).

5. In the order-in-original the Adjudicating Authority has observed that due to introduction of GST w.e.f. 01.07.2017, cenvat credit account cannot be adjusted because Cenvat Credit Rules, 2004, are no longer applicable. Further, observed that Section 140 of CGST Act provides for the arrangement for cenvat credit balance lying in their return relating to the period ending on 30.06.2017. The said Section reads as follows:-

"Section 140(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely: - (i) where the said amount of credit is not admissible as input tax credit under this Act; or (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

6. Further, referred to Rule 117 of CGST Rules, 2017, which provides for the procedure for carried forward of the unutilised cenvat credit as on 30.06.2017. It is further observed that the appellant could have carried forward the amount of cenvat credit as on 30.06.2017, and as they have not taken the said credit forward to GST regime, such adjustment of service tax as prayed is not allowable. Further, observed that balance amount of tax payable is Rs.10,97,912/- (Rs.15,39,919/- - Rs.4,42,007/-). Further, observing that appellant has failed to deposit the amount on the due date and accordingly held that interest is also payable, and the amount already paid towards interest is appropriated. The proposed disallowance of cenvat credit of Rs. 66,452/- was also confirmed alongwith interest. It was further held that on the cenvat credit of Rs. 2,97,289/- taken in the month of September, 2014 whereas it relates to Invoice No. 454 dated 31.10.2014, and hence they are liable to interest @ 18% for one month, which was calculated as Rs.4545/-. Further, penalty under

Section 78 was imposed for Rs.16,06,371/- (Rs.15,39,919 + Rs. 66,452/-). Further, mentioning that the appellant is entitled to reduced penalty of 25%, if deposited within thirty days from the receipt of the adjudicating order.

7. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) contesting only the issue of disallowance of adjustment of the amount lying to their credit in the cenvat account, of Rs.14,31,166/- as on 30.06.2017.

8. Learned Commissioner (Appeals) observed that cenvat credit lying unutilised as on 30.06.2017 would have been carried forward to GST regime as per provisions of Section 140 of the CGST Act. The said amount cannot be utilised or adjusted other than the method, provided under Section 140 of the CGST Act. Accordingly, dismissed the appeal. Being aggrieved, the appellant is before this Tribunal.

9. Learned Counsel Shri Rajesh Chhibber appearing for the appellant urges that the learned Commissioner (Appeals) have committed a mistake of law in his conclusion. Section 140 of the CGST Act, clearly provides the entitlement to take transfer of credit to the GST regime, if an assessee who is liable to pay tax under the CGST Act wishes to take adjustment of unutilised credit. Section 140(1) contains the condition precedent i.e. – a registered person shall be entitled to take, in his 'electronic credit ledger', the amount of cenvat credit relating to the period ended 30.06.2017 under the existing regime

prior to 30.06.2017, and is also liable to pay tax w.e.f. 01.07.2017 under the GST regime. Further, the carry forward is on the condition precedent - of the assessee opting to file application for transfer in the prescribed Form TRAN-1, and the same is not mandatory. Further, Section 142 of the CGST Act does not mandate any disability in adjustment of tax liability out of the cenvat credit available during that period (earlier period), which has not been carried forward to the CGST regime. Accordingly, he prays for allowing the appeal with consequential benefits.

10. Learned Authorised Representative Shri Pradeep Gupta appearing for the Revenue relies on the impugned order. He also placed reliance on the ruling of the Hon'ble Madras High Court in the case of **Mountain Valley Springs India Pvt. Ltd., vs. Asstt./ Dy. Commr. of GST, Chennai -2019 (24) GSTL 342 (Mad.)**, wherein the issue before the Hon'ble High Court was that - **Mountain Valley** was unable to avail the benefit of cenvat credit lying as on 30.06.2017 as they have failed to file the requisite form, due to technical glitches. I find that such facts are not involved in this appeal. Further, reliance is placed on the ruling in the case of **Indus Ind Media Communication Ltd., vs. Union of India- 2019 (20) GSTL 10 (Kar.)** wherein the writ petition before the Karnataka High Court - the issue was, the assessee was facing certain technical difficulties in uploading the Form TRAN-1, and failed to take credit as carried forward to the GST regime, such facts are not applicable to this appeal.

11. Having considered the rival contentions, I am satisfied that there is no bar or disability under Section 140(1) read with Section 142 of CGST Act, 2017 on an assessee for claiming adjustment of the tax demand from the unutilised cenvat credit (lying to the credit as on 30.06.2017), which has not been carried forward to the GST regime. I further find that the Commissioner (Appeals) has committed a mistake of law. Accordingly, I allow the appeal and set aside the impugned order of the Commissioner (Appeals). I further direct the Adjudicating Authority to grant adjustment of the unutilised amount of Rs.14,31,166/- against the demand payable by the assessee. The appellant shall be entitled to consequential benefits in accordance with law.

12. Thus, the appeal is allowed.

(Operative portion of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)