CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53417 of 2018-SM

(Arising out of order-in-appeal No. 147(AK) ST/JPR/2017 dated 13.07.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur).

M/s Violin Events **Appellant**
393, Dhruv Marg, Tilak Nagar
Jaipur.

VERSUS

Commissioner, Central Goods and Service Tax, **Respondent**
NCR Building, Statue Circle, 'C' Scheme
Jaipur-302005.

APPEARANCE:

Ms. Surbhi Sinha, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50373/2022

DATE OF HEARING/DECISION: 13.04.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the Commissioner (Appeals) has rightly confirmed some of the grounds against the appellant, whereas with regard to the major portion of the dispute he has remanded the matter to the Adjudicating Authority for verification and re-consideration, in accordance with law.

3. I find from the impugned order that the Commissioner (Appeals) have remanded the matter with regard to the following issues:-

(i) With regard to claim that some of the amounts have been considered twice while calculating the taxable turnover;

(ii) With regard to tax imposed on amount received from Rajasthan Builders Promotion Association being claimed as not relating to receipt towards service provided;

(iii) With regard to claim of sale of goods like T-shirts, banner etc. on which service tax is not attracted;

(iv) The claim of the amount being in negative list Rs.39,64,727/- or alternatively the said amount being repeatedly considered.

(v) The appellant had deposited Rs. 8 lakhs towards service tax vide challan dated 20.05.2016, the credit of which was not given in the order-in-original.

4. The Commissioner (Appeals) was pleased to confirm the following grounds against the appellant and in favour of the Revenue:-

(i) With regard to claim of some of services falling under negative list, as defined under Section 66D;

(ii) With regard to claim of cenvat credit of Rs.14,28,516/-, on input services received by the appellant.

(iii) Penalty imposed under Section 77 and 78 have been confirmed with the observation that the same shall stands reduced or adjusted in accordance with the tax liability confirmed pursuant to remand.

5. I find that substantial dispute in the matter has been remanded for reconsideration by the original Adjudicating Authority. Under such facts and circumstances, I find that the appellant was a registered assessee with the Service Tax Department and hence they are eligible to credit of service tax on the input services and also obligated to deposit the tax on outward service after adjusting output tax with the input tax. Thus, denial of cenvat credit to the appellant is against the spirit of value added tax. Accordingly, I hold that the appellant shall be entitled to cenvat credit of the input service tax, subject to verification of the quantum by the Court below.

6. As regards denial of part of the output services being under negative list, I modify the impugned order and allow this ground and remand the matter to the Adjudicating Authority.

7. Accordingly, I set aside the penalties imposed and remand for reconsideration in accordance with law.

8. To sum up, the whole dispute is remanded for reconsideration to the original Adjudicating Authority, who shall after hearing the appellant and perusing the record, shall pass a reasoned order in accordance with law. It is further clarified that the ground is allowed with regard to the facility of cenvat credit to the appellant.

9. Thus, the appeal stands allowed, by way of remand to the original Adjudicating Authority.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant