CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 51959/2022

[Arising out of Order-in-Appeal No. 53 (SM) ST/JPR/2021 dated 07.03.2022 passed by the Commissioner (Appeals) Central Excise & CGST, Jaipur]

THE POST MASTER TONK Head Office, Sawai Madhopur Road Tonk, Rajasthan 304001.	**APPELLANT**

Vs.

COMMISSIONER, CENTRAL EXCISE & CGST-JAIPUR I	**RESPONDENT**

APPEARANCE:

Shri Tej Narayan Saini, Chartered Accountant for the Appellant
Ms Tamana Alam, Authorised Representative for the Department

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)

Date of Hearing : November 24, 2022
Date of Decision : November 24, 2022

FINAL ORDER No. 51108 /2022

PER DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 53/2021 dated 07.03.2022 vide which the demand of Rs.1,81,911/- has been confirmed holding it to be a wrongly availed Cenvat Credit for the period from October 2014 to June, 2017 for want of requisite documents. The Order-in-Original has been confirmed by the Commissioner (Appeals).

2. The facts, in brief, relevant for the adjudication are that the appellant is engaged in rendering taxable service as that of Courier Agent Service and Business Auxiliary Service. During the audit they were observed to have availed and utilised the Cenvat

credit of service tax without any valid documents resulting into issue of Show Cause Notice No. 02/2018-18/1119 dated 18.10.2019 proposing the recovery of wrongly availed and utilised Cenvat credit of Rs.1,81,911/- along with proportionate interest and appropriate penalty. The said proposal has initially been confirmed vide Order-in-Original No. 64/2020 dated 08.02.2021. The appeal thereof has been dismissed vide the order under challenge.

3. I have heard Shri Tej Narayan Saini, learned Chartered Accountant for the Appellant and Ms Tamana Alam, Authorised Representative for the Department**.**

4. The learned Chartered Accountant for the appellant has brought voluminous documents as a proof for the payments pertaining to the invoices/ bills raised for providing the taxable service. It is mentioned that all the relevant documents were duly provided by the appellant to the Adjudicating Authority below. But those documents have still not been considered, thus the demand has been wrongly confirmed. It is further submitted that while issuing the show cause notice and even confirming the demand extended period has been invoked. The Adjudicating Authority below have ignored the fact that appellant is a public utility service, there cannot be any malafide intent to cause any loss to the Government Exchequer. The order under challenge is therefore prayed to be set aside and appeal to be allowed.

5. While rebutting the submissions, learned Departmental Representative has foremost pointed out that order of Commissioner (Appeals) is the order of rejection for want of mandatory pre-deposit. The appeal is liable to be dismissed on this score itself. However, on merits, learned Counsel has relied upon the findings in paragraph 5.1 of the order under challenge and accordingly, has prayed that the appeal to be dismissed.

6. Having heard the rival contentions, I observe and hold as follows:

The demand for the period from October, 2014 to June, 2017 for an amount of Rs.1,81,911/- was been confirmed alleging the said amount to have been wrongly availed and utilised Cenvat Credit for the reason that the same has not been availed on the valid documents. At this stage, Order-in-Original is perused. From paragraph 12 thereof it is abundantly clear that duly verified copies of payment vouchers and official bills generated for payment of telephonic bills and RSRTC subsidy bill for the period in question were duly provided by the appellant to the Adjudicating Authority. The authority has also acknowledged the same. The Original Authority has recorded that since the record was voluminous that the appellant was required to submit month-wise of Cenvat credit availed details from October, 2014 to June 2017 (the period in question) pointing out the specific documents for the respective entry with respect to the amount in question. The said detail was also provided by the appellant to the Adjudicating Authority. Not only this, those documents were also got checked and verified by the Jurisdictional RO. The demand has been confirmed based on the verification report of the said Jurisdictional RO. He has reported that the documents were not prescribed in terms of provision of Rule 9(1) of Cenvat Credit Rules, 2004 and Rule 11 of Central Excise Rules, 2002, as the month-wise bifurcation was not provided. This reason, to my opinion, is not the requirement of Rule 9(1) of Cenvat Credit Rules. The Rule requires invoices with such details as mentioned in the Rule. There is no denial that requisite details were available in the documents provided. I also observe that as per the Verifying officer the amount calculated is Rs.1,42,193/- instead of Rs.1,81,911/-.

7. In the light of these findings I am of the opinion that the Adjudicating Authority have laid wrong emphasis on those findings which have no reason nor any explanation as to why the voluminous documents produced by the appellants were not confirming to the requirement of Rule 9(1) of Cenvat Credit Rules, 2004 and Rue 11 of Central Excise Rules, 2002. Both these Rules require the invoices and payments proof.

8. As already observed above, that the said requisite documents were provided at the initial stage of adjudication itself. Otherwise also proviso to Rule 9 shows that if the documents as submitted by the appellants contain all such particulars as are mentioned in the invoices or payment received, then also the Cenvat credit is to be allowed. The Adjudicating authority below has miserably failed to consider the said proviso. To my opinion, documents having all requisite particulars were duly been given to the Original Adjudicating Authority itself. The Authority was rather facilitated by the Counsel with the precise information out of the voluminous record with respect to the period in question. Denying the Cenvat credit based on such documents is therefore, held to be wrong and unreasonable.

9. Coming to the issue of non deposit of mandatory amount i.e. 7.5% of the demand confirmed at the time of filing of appeal before the Commissioner (Appeals), I observe that while filing this appeal before Tribunal 10% of the amount of demand confirmed has been deposited by the appellant. The Challan date 8.06.2022 for an amount of Rs. 18,192/- is perused on record. In terms of Section 35F of Central Excise Act, 1944, 10% of the amount confirmed has to be deposited in total till filing the appeal before this Tribunal. That is to say amount equal to 7.5% of the demand confirmed is to be filed before the Commissioner (Appeals) and remaining 2.5% of the demand confirmed is to be deposited prior to filing the appeal before this Tribunal. As already held above entire 10% of the amount of duty confirmed

against the appellant stands already deposited and also that the Commissioner (Appeals) has decided the appeal on merits as well, there remains no need of remanding back the matter to Commissioner (Appeals). The findings of Commissioner (Appeals) are no more sustainable on the preliminary issue of lack of mandatory pre-deposit and findings on merits have already been held as wrong.

10. Finally it is also observed that the show cause notice in the present appeal has been issued on 18.10.2019 proposing the demand for a period of October, 2014 to June 2017. Thus the Show cause notice was issued by invoking the extended period of limitation without alleging any suppression on the part of the appellant. The Show cause notice has simply mentioned that assessee has not disclosed the facts regarding the nature of input service and the place of receipt of such input service on which the Cenvat Credit of service tax was availed. The Original Adjudicating Authority has also justified the invocation of extended period of limitation only on the ground that appellant had never disclosed the wrong availment of Cenvat Credit availed on the basis of telephone and RSRTC bills. As already been observed that the appellants had provided all the requisite documents before the Departmental Authorities there remains no evidence to prove the alleged suppression. It is not the case of the department that service tax was not paid by the appellants. Mere allegation of documents to be improper cannot be the admissible evidence to prove that there was an intent to evade tax liability. Otherwise also, the appellant is a public utility authority, i.e. Government organisation. No motive rests with the appellant to have any intent to evade their liability which otherwise stand duly discharged. As observed, all documents with requisite details were made available. Accordingly, I hold that the Show Cause Notice itself is barred by time.

11. In view of the entire above discussions, the order under challenge is set aside and consequent thereto the appeal is allowed.

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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