In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/3721/2012-SM
(Out of Order-in Appeal No. 159/BPL/2012 dated 22.08.2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Bhopal)

Universal Cable Ltd …Appellant
Vs
CCE Bhopal …Respondent

Appearance:
Present for the Appellant : Sh Shantanu Kumar, Advocate
Present for the Respondent : Sh RK Mishra, DR

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

Date of hearing/decision:25.09.2017

Final Order No.56858/2017

Per Ashok Jindal,

The appellant is in appeal against the impugned order wherein cenvat credit availed by them on the supplementary invoices issued by service provider has been rejected by the authorities below as per rule 9(1)(bb) of CCR,2004, they are eligible for availing of cenvat credit.

2. Heard parties and examined record.

3. The ld Counsel for the appellant submits that as the service provider did not pay service tax at the time of providing services during the disputed period but on department's insistence they have paid service tax and issued

supplementary invoices for availment of cenvat credit to the appellant. He further submits that in the case of service provider, namely, Shri Karanveer Singh & Bros vide order No.56260/2017 dated 13.07.2017, this Tribunal held that the service provider was not required to pay service tax, therefore, whatever service tax paid by the service provider, they are entitled to avail cenvat credit.

4. Considering the fact that in the case of service provider, this tribunal has held that service provider was not required to pay service tax. Under the circumstances, it is not coming out from the fact that whether the service provider has claimed the refund of service tax paid by them against supplementary invoices issued to the appellant. In that circumstances, matter is required to be re-considered by the adjudicating authority to ascertain the fact whether M/s Karanveer Singh & Bros. have claimed refund of service tax paid in terms of order of tribunal dated 13.07.2007. If refund claim has been sanctioned to them, in that circumstances, applicant is not entitled to avail cenvat credit. If refund claim has not been filed by M/s Karanveer Singh & Bros., the appellant is entitled to avail cenvat credit. Therefore, matter remanded back to the adjudicating authority for verification purposes.

5. Under these terms, appeal is disposed-of by way of remand

(Pronounced & dictated in the open court)

(Ashok Jindal)
Member (Judicial)

pcs