CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 13.12.2017

Appeal No. ST/52073/2014- [DB]
[Arising out of the Order-in-Appeal No. JAI-EXCUS-001-COM-109-13-14 dated 31/01/2014 passed by the Commissioner, Central Excise, Jaipur.]

DGM Maintenance … Appellant

Vs.

CCE, Jaipur …Respondent

Appearance:
Present Shri R. S. Sharma, Advocate & M.S. Nimesh, Consultant for the appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 58373/2017

Per B.Ravichandran

1. The appellant is aggrieved by the order dated 13/01/2014 of Commissioner of Central Excise, Jaipur. The appellant is engaged in providing telecommunication service and is registered with the department for payment of Service Tax. They were availing Cenvat credit on input services in terms of Cenvat Credit Rules, 2004. The dispute in the present case related to the Service Tax paid on input service of "Interconnectivity Usages Services" provided by other telecom operators. The appellant discharged Service Tax to the other telecom operators and availed credit. The Revenue objected to the said credit on the ground that the appellant is providing interconnectivity service to other telecom operators which is his output service for which the interconnectivity services received has no connection as input service. The impugned order further held

that BSNL is providing telephone services to the subscribers and for providing such telephone services inter-connectivity with other telecom operators is a requirement. However, BSNL is separately registered and cannot be considered to have used the inter-connectivity services which suffered Service Tax and paid by the present appellant. This two are separate registrants for Service Tax and the inter-connectivity services received by DGM (Maintenance), the present appellant has nothing to do with Inter-connectivity services provided by the appellant for other telecom operators. Accordingly, the input service credit was denied and penalty was imposed equal to the availed credit.

2. The Ld. Counsel appearing for the appellant submitted that the appellant is registered with the Department for telephone services. They are discharging Service Tax on telecommunication service in terms of Section 65 (109 a). For providing telecommunication service inter-connectivity with other telecom service providers is necessary. The appellant is entrusted with the work of arranging inter-connectivity services with other telecom operators. They received such inter-connectivity services and also provide such inter-connectivity services which is a part of overall telecommunication operation. The present denial of credit is only on the ground that the inter-connectivity service provided by the appellant to the other telecom services being output service has no nexus with inter-connectivity services received by the appellant from other telecom operators. The Ld. Counsel submitted that this is a totally erroneous appreciation of fact. BSNL as an organization is providing telecom service. Different Service Tax registrations are

taken for administrative reasons. Even otherwise the DGM (Maintenance), the present appellant is entrusted with the work of arranging the inter-connectivity, inward as well as outward for provision of telephone services to the subscribers. The inter-connectivity is necessary for telecommunication service is not in dispute. It cannot be stated that the inward inter-connectivity service should be directly linked to the outward inter-connectivity service. Both inward as well as outward inter-connectivity services are over all required for providing telephone service to the ultimate consumer. In such context there is no legal justification in denying the credit to the appellant.

3. The Ld. AR submitted that the appellants chose to register BSNL of the concerned circle as well as DGM (Maintenance) of BSNL for separate tax registration. Cenvat credit provisions are applicable to Service Tax registrants. The credit cannot be allowed based on output service provided by another registrant even though part of the same company.

4. We have heard both the sides and perused the appeal records.

5. The factual position regarding the receipt of input service and provision of output service by way of inter-connectivity of telecommunication is not in dispute. However, the objection of the Revenue is that the input inter-connectivity should be used for output inter-connectivity and if such direct connection is not there then the Cenvat Credit of tax paid on input inter-connectivity shall be denied. This proposition is not factually or legally sustainable. Inter-connectivity of services of various telecom operators is a basic requirement for providing telecommunication service. No telecom

operator operates alone. In the present case DGM (Maintenance) is managing inter-connectivity inward as well as outward for BSNL who is providing telephone service to the ultimate consumers. Inter-connectivity is between the telecom operators only. We find no legal justification to deny the credit on such input service which are essentially required for providing telecommunication service of further inter-connectivity and telephony.

6. We note that similar dispute in respect of the same appellant came before the Tribunal. The Tribunal vide Final Order No. 60936/2016 dated 12/07/2016 relying on earlier decisions held that the Cenvat credit being a substantial benefit cannot be denied on account of procedural defects of minor nature and accordingly allowed the credit. The dispute in the said case was with reference to the crdit availed by General Manager office of BSNL in respect of taxable output service provided by other several units of BSNL. The revenue denied the credit in the said case on the ground that the input service received by the General Manger office has no connection with the services provided by the other units of BSNL.

7. In view of the above discussion and analysis we find denial of credit in the present case is not justified. Accordingly, we set aside the impugned order and allow the appeal.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

(B.Ravichandran)
Member (Technical)

Rekha