

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:02.02.2018

Excise Appeal No.51503/2017-EX(SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-02-17-18 dated 10.04.2017 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax,Bhopal (M.P.)]

M/s.Bhagirath Coach & Metal Fabricators Pvt.Ltd.

Appellants

Vs.

CCE & ST, Indore

Respondent

Appearance:

Rep. by Shri M. Saharan, Advocate for the appellant.

Rep. by Shri P. Juneja, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No.50630/2018

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 10.04.2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.

2. The brief facts of the case are that the appellant is engaged in the manufacture of motor vehicle for transport of goods and body for motor vehicle falling under Chapter Heading 8704 and 8707 of the Central Excise Tariff Act, 1985. The appellant avails Cenvat credit of central excise duty paid on inputs and capital goods and on the input services as per the provisions of Cenvat Credit Rules, 2004. During the period, April, 2008 to July, 2013, the appellant had availed man power recruitment and supply agency services from M/s.New Pithampur Road

Line, Pithampur. On the basis of the bill dated 30.09.2013 issued by such service provider, the appellant availed Cenvat credit of service tax indicted in such bills. Taking of Cenvat credit by the appellant was disputed by the Department on the ground that the service tax was paid by the service provider by reason of fraud, collusion or willful misstatement, etc. and accordingly, as per the provisions of Rule 9(1)(bb) of the Rules, the appellant is not permitted to take Cenvat credit. The matter was adjudicated against the appellant by order dated 12.06.2015, wherein Cenvat credit taken by the appellant amounting to Rs.11,06,092/- was disallowed and the penalty of Rs.5,53,046/- was imposed on the appellant. On appeal, the Id. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand confirmed on the appellant.

3. Ld. Advocate for the appellant submits that though show cause notice was issued by the jurisdictional Service Tax Authorities on the service provider, but the adjudication order passed against the service provider was set aside by the Commissioner (Appeals) vide order dated 2.6.2016. Thus, he submits that since the charges framed against the service provider was set aside by the jurisdictional Commissioner (Appeals), the service tax paid by the service provider cannot be denied as Cenvat to the appellant under the provisions of Rule 9(1) (bb) of the Rules.

4. On the other hand, Id. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides.

6. The observation of the Id. Commissioner (Appeals) relevant for deciding the present issue are contained in paragraph-6 in the impugned order, which is extracted herein below:-

“ 6. I find that appellant had taken credit of the service tax paid by M/s.New Pithampur Road Lines, Pithampur who had provided Man Power Recruitment and Supply services to the appellant during April, 2008 to July,2013. The said service tax amount of Rs.11,06,092/-was paid by service provider in the month of September, 2013. The service provider had raised bills to the appellant on 30.09.2013 for the said payment of service tax and in turn appellant had taken Cenvat credit. It was further find that the service provider i.e. M/s.New Pithampur Road Lines, Pithampur was issued SCN on dt.18.04.2013 for recovery of service tax and for imposition of penalty on account of willful suppression of facts. Demand of service tax was confirmed against the service provider i.e. M/s.New Pithampur Road Lines, Pithampur on dated 30.07.2004 and this order is set aside by the Commissioner (Appeals), Bhopal vide Order-in-Appeal No.BHO-EXCUS-001-APP-119-16-17 dated 02.06.2016. The Appellate Authority has held as under:

“The appellant had taken the contract for transportation of vehicles on per trip basis recruitment and supply of man power cannot be established therefore the appellant is not covered under the “Man Power Recruitment and Supply Service”. The services of the appellant are not that of Man Power Supply and present demand is not sustainable and liable to be dropped. In the absence of demand, penalty is not imposable.”

7. On perusal of the above observations of the Id. Commissioner (Appeals), it transpires that the charges leveled against the service provider regarding fraud, collusion, willful mis-statement, etc. were no more in existence in view of the proceedings dropped by the jurisdictional Commissioner (Appeals). Since the

service tax amount in question was not paid by the reason of fraud, collusion, etc., the appellant cannot be denied the Cenvat credit benefit in terms of the Rule 9(1) (bb) of the Rules. Further, Rule 3 of the Rules entitles the service receiver to avail Cenvat credit of service tax paid by the service provider. In this case, since the service tax paid by the service provider was availed as credit by the appellant on the basis of the bills raised by him, the benefit of Cenvat credit cannot also be denied to the appellant.

8. Therefore, I do not find any merit in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

ckp.

