CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 1692 of 2012-SM

(Arising out of order-in-appeal No. 07 (AKJ) ST/JPR-II/2012 dated 22.02.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur-II).

Bharat Sanchar Nigam Limited **Appellant**
Subhash Nagar, Pal Road
Jodhpur-342009.

VERSUS

Commissioner (Appeals) Central Excise **Respondent**
New Central Revenue Building
C-Scheme, Jaipur-302005.

APPEARANCE:

Sh. O. P. Agarwal, Advocate for the appellant
Sh. P. R. Gupta, Authorised Representative for the respondent

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

DATE OF HEARING: 16.04.2019
DATE OF DECISION: 16.04.2019

FINAL ORDER NO.50553/2019

ANIL CHOUDHARY:

Bharat Sanchar Nigam Limited, a PSU provides telecommunication services all over India and for administrative convenience, it is divided in various SSA (Secondary Switching Area) and all SSA are separately registered under the Finance Act, 1994 for discharging their service tax liability. But repairs and maintenance of telecom exchange and equipments are taken care of by 'civil and electrical wing' of BSNL and such wing takes care of requirement of more than one SSA as directed by the Corporate Office of BSNL. In the present case, BSNL - Jodhpur controls the repairs and maintenance of 4-SSA, namely Jodhpur, Nagaur, Jaisalmer and Barmer. Now, the appellant i.e; BSNL - Jodhpur has taken cenvat credit of service tax paid on repairs and maintenance services, which has been denied on the grounds that such input services were used by other SSA (Nagaur, Jaisalmer and Barmer) and not by appellant. Hence the present appeal.

2. Learned Counsel for the appellant submitted that all the inputs, input services and capital goods are being used by BSNL in an integrated way, as a whole, for providing of output services. Admittedly, without use of other SSA (inputs, input services and capital goods) providing of seamless output services would not be possible. Therefore, it cannot be said that input services in question were not used by the appellant for providing of output services. The credit in question was taken as per their corporate office guidelines and admittedly the other SSA has not taken cenvat credit of service tax in question on proportionate basis. Learned Counsel further relies on the ruling of Hon'ble **Madras High Court in CCE vs. Bharat Sanchar Nigam Limited -2017-TIOL-1487-HC-MAD-CX** where also another branch/ SSA had purchased certain capital equipment for which, cenvat credit was paid by it and admittedly the capital equipment which was received by their Salem SSA was used for provisioning of telephone services by other SSAs. The issue before the High Court was whether the Salem SSA could have claimed cenvat credit in respect of capital equipment which was removed to other SSA in the same zone. The Hon'ble High Court affirming the decision of this Tribunal, observed that the factum of removal of the capital goods from the premises, in which they were received, is not in dispute. It is also not disputed that though

the capital goods were removed to a place outside the premises of Salem SSA, they continued to be used by other SSAs, cannot be denied the right to avail the cenvat credit. Thus, the position in this behalf is supported by the manner in which Rule 3(5) of Cenvat Credit Rules, 2004, is framed. Further, the Hon'ble High Court rejected the submission of the Revenue as being interpretation of rule 3(1)(i), for the reason that Rule 3(1)(i) allows, inter alia, a provider of output service to take cenvat credit of any duty of excise, which is paid on capital goods received by the provider of output service, whereas, there is nothing in the said rule which suggests that cenvat credit would be available to an output service provider, only if, the capital goods in issue, are used in the very same premises. Thus, in nutshell, the Hon'ble High Court held that in case of service provider that capital goods, inputs can be used even outside the registered premises for providing output services, taxable as per the provisions of Finance Act, 1994. Accordingly, learned Counsel prays for allowing the appeal. He further draws my attention, for the subsequent period, the order in original No. 71/ST/JP-II/2013-Addl. Commissioner dated 26.03.2013 wherein under similar facts and circumstances the Additional commissioner following the ruling in the case of **BSNL vs. CCE - 2009 (14) STR 674 (Tri.)** and in the case of **CCE, Salem vs. BSNL** (supra) have held that the cenvat credit on capital goods and input services have been rightly taken and cannot be denied.

2. Learned Departmental Representative for the revenue relied on the impugned order. He further reiterated the order (in para 4.4 of the order-in-original) wherein it is observed that Rule 2(l) of Cenvat Credit

Rule essentially provides use of input services for providing output service. The nexus of both the input and output service is essential for availment of credit. The assessee in the present case has grossly violated the intent of legislation which cannot be treated either as procedural lapse or nullified on grounds of revenue neutrality. Further, the assessee could have availed the facility of 'input service distribution' as provided under the Act and the Rules, thus denying the cenvat credit.

3. Having considered the rival contentions, I find that the appellant – assessee have got a common PAN no. and is one organisation providing services throughout India. Further, their service tax registration number is similar (PAN based). The assessee is providing various service tax services. For the sake of administrative convenience, they have taken registration in different SSA (areas). However, admittedly they undertake repair and maintenance through their civil and electrical wing, which caters to several SSA's. Further, cenvat credit of service tax / inputs or capital goods, is not confined to the registered premises, but can be availed even if capital goods are received beyond the registered premises for providing output services. Accordingly, I hold that the appellant is entitled to credit on capital goods, input services and inputs which are received in one SSA and are distributed to other SSA. Thus, the appeal is allowed. The impugned order is set aside. Appellant is entitled to consequential benefit in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant