CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No.50096 of 2016 - SM

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-073-15-16 dated 18.11.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (Madhya Pradesh)].

M/s.Bharat Sanchar Nigam Limited **Appellant**
Telephone Exchange Building, Kalinabagh,
Dewas (Madhya Pradesh)

VERSUS

Commissioner of Central Goods & Service Tax, Central Excise and Customs, **Respondent**
Manik Bagh, Post Bag No.10, Indore (M.P.).

APPEARANCE:

Shri Himanshu Khemuka, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

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

FINAL ORDER NO.50849/2019

DATE OF HEARING: 28.06.2019
DATE OF DECISION: 28.06.2019

ANIL CHOUDHARY:

The appellant, M/s. Bharat Sanchar Nigham Limited, a Public Sector Undertaking, is engaged in providing the services under the Head "tele-communication services". Vide the order-in-original dated 20.02.2013, the demand of cenvat credit of Rs.15,27,035/- was confirmed under Rule 14 of the Cenvat Credit Rules read with proviso to Section 11 A(1) along with section 11(4) of the Central Excise act along with interest and further equal amount of penalty was imposed under Rule 15 (2) of the Cenvat Credit Rules read with Section 11 AC of the Act.

2 Being aggrieved, the assessee/appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal has recorded the following findings:-

> "5. The Superintendent, Service Tax Range-I, Central Excise Dewas vide his letter C. No.:R I/ST/DWS/BSNL SCN/12-18/530 dated 25.09.2014 has reported that the appellant has submitted certified copy of their journal showing reversal of Cenvat Credit of Rs.15,27,035/- which has been verified by him. Since the appellant has not disputed the wrong availment of credit, and since the appellant has reversed the wrong credit, which has now been verified no further discussion on this matter is required."

3. However, in the concluding part of the order, the ld. Commissioner (Appeals) has observed that the appeal is liable to be rejected and accordingly upheld the order-in-original.

4. Being aggrieved, the appellant is before this Tribunal.

5. Ld. Counsel for the appellant states that in view of the findings recorded by the ld. Commissioner (Appeals) in para-5 of the impugned order, the conclusion recorded in para-8 is erroneous, and in conflict with the findings recorded. Secondly, he states that the appellant had claimed at the time of adjudication, that they have reversed the said amount of Rs.15,27,035/- vide journal slip no.J-327 dated 31.10.10. However, during the adjudication, the Range Officer had reported that no such reversal is there. Accordingly, the demand was confirmed along with penalty. However, before the ld. Commissioner (Appeals), the said issue was agitated and the Commissioner (Appeals) has recorded the findings in favour of the appellant that they have reversed the disputed amount of credit in October, 2010. Further, it is stated that the admitted fact is that the appellant has maintained proper records and vouchers of the transactions. The mistakes pointed out by the Revenue during audit is bonafide mistake, being mistake of clerical nature and no falsification of records, etc. has been made out.

6. He further states that in view of the audit objection, show cause notice was issued on 18.10.2011 is barred by limitation, being issued after more than 20 months. Ld. Counsel further states that they are liable to pay disputed cenvat credit in question, they are not liable to pay any interest in view of the amendment by way of clarification in Rule 14 w.e.f. 1.4.2012, providing that interest is payable when cenvat credit is wrongly taken and utilized. Earlier, the provision was 'wrongly taken or utilized. Accordingly, ld. Counsel prays for allowing their appeal with consequential benefit.

7. Ld. Authorised Representative for Revenue has relied upon the impugned order.

8. Having considered the rival contentions, I find that in view of the findings recorded by the ld. Commissioner (Appeals) in para-5 of the impugned order, it was fact that the appellant had revered the cenvat credit under dispute, prior to issue of show cause notice. In this view of the matter, the penalty imposed under Rule 15(2) of Cenvat Credit Rules read with Section 11 AC is set aside. So far as the interest is concerned, in view of the amended Rule 14, it is held that the appellant is liable for interest only to the extent they have utilized the cenvat credit. Accordingly, the appellant is directed to file the calculation and or evidence before the Adjudicating Authority within a period of 45 days from the date of receipt of this order and the same shall be verified by the Adjudicating Authority. If any interest is found to be payable, the same shall be paid by the appellant within 30 days of such intimation by the Adjudicating Authority. Thus, the appeal is allowed with consequential benefit.

[Order dictated and pronounced in open court]

(Anil Choudhary)
Member (Judicial)

Ckp.