CUSTOMS, EXCISE AND SERVICE TAX APPELLAT TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. - I

Service Tax Appeal No.476 of 2012

(Arising out of Order-in-Original No.19/2011 (S.T.) dated 30.11.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Tirupati.)

M/s. Bharat Sanchar Nigam Limited (BSNL)
(Office of the Sr. General Manager, Sanchar Bhavan Compound, BSNL, Tirupati-517501, Andhra Pradesh.)

...Appellant

VERSUS

Commissioner of Central Tax, Tirupati

.....Respondent

(9/86-A, Amaravathi Nagar, M.R. Palli, Tirupati-517502, Andhra Pradesh.)

APPEARANCE

Shri K. Nagaraja Rao, Advocate for the Appellant (s)
Shri Mallikarjun Reddy, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 30063/2022

DATE OF HEARING : 1 March 2022
DATE OF DECISION : 19 May 2022 .

P.K.CHOUDHARY :

The present appeal has been filed by the Appellant, M/s. BSNL Tirupati, being aggrieved by the Order in Original dated 30.11.2011 wherein demand of Cenvat credit to the extent of Rs.7,41,86,762/- has been confirmed by the Ld. Adjudicating authority along with imposition of penalty. There are three issues to be decided in the present appeal, Firstly, whether the distribution of Cenvat credit on account of ISD of Rs. 93,62,730/- is legal and proper or not as per provisions of Rule 7 of the CCR, 2004, secondly as to the excess availment of Cenvat credit of more than 20% of credit vis-à-vis the service tax payable to the extent of Rs. 1,56,70,418/- by the appellant under Rule 6(3)(c) of the CCR, 2004 as existed at that point of time and lastly whether the Appellant is liable to pay interest and penalty on the amount of Cenvat credit availed by it on Capital Goods to the full extent in the first year of purchase instead of 50%.

2. We have heard the Ld. Counsel appearing for the Appellants and the Ld.Authorized Representative for the Department.

3. As regards the first issue regarding availment of ISD credit by the Tirupati unit for materials used in other units, the Appellant has submitted that there was no restriction in availment of Cenvat credit as distributed by the ISD unit under Rule 7 of the CCR, 2004. We find that the issue in this regard is settled by the judgment of the Hon'ble Karnataka High Court in the case of COMMISSIONER OF C. EX., BANGALORE-I Versus ECOF INDUSTRIES PVT. LTD. [2011 (271) E.L.T. 58 (Kar.)] wherein it was held by the Court as-

> "***8.*** *It is in this context, the definition of input service distributor makes it clear that a manufacturer or a producer of a final product or a provider of output service may have more than one unit and may be distributed in various parts of the country. It is in this background the definition of service distributor is defined as office of the manufacturer or producer of a final product or provider of output service which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. Therefore, the law mandates that the manufacturer who wants to avail the benefit of this service tax if he has more than one unit he should also get registered himself as a service provider and then, he would be able to collect all the input service tax paid in all its units and accumulate them at its head office and distribute the said credit to its various units. At the time of distribution, the manner of distribution is provided in Rule 7 which reads as under :-*
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> > "***Rule 7. Manner of distribution of credit by input service distributor.*** *— The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input*

service to its manufacturing units or units providing output service, subject to the following conditions, namely :-

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon, or

(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services.

9. *In fact, the Board has issued a circular clarifying in this regard, which is extracted by the tribunal at para 7 which reads as under :-*

"Para 7. Para 2.3 of the Master Circular referred to by the ld. Advocate reads as under :-

"2.3 An 'Input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which Cenvat credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that - (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required (under Section 69 of the Act, read with Notification No. 26/2005-S.T.) to take a separate registration."

10. *Therefore, these are the only two limitations, which are imposed in Rule 7 preventing the manufacturer from utilizing the CENVAT* *credit, otherwise, he is entitled to the said credit. Merely because the input service tax is paid at a particular unit and the benefit is sought to be availed at another unit, the same is not prohibited under law. It is in this context, the manufacturer is expected to register himself as a input service distributor and thereafter, he is entitled to distribution of credit of such input in the manner prescribed under law. Therefore, the order passed by the tribunal is legal and valid and does not suffer from any legal infirmity and does not call for any interference and therefore it is dismissed."*

We find in the instant case of the Appellant also there is no dispute as to the availment of Cenvat credit by the Appellant and the distribution by ISD. The only allegation raised in that the said services are not used by the Appellant and hence Cenvat credit should not be allowed. Since the above issue is already settled by the judgment *supra,* we are of the view that the demand in this case also is liable to be set aside and we order so.

4. As regards the next issue of utilisation of excess Cenvat credit by ignoring the provisions of Rule 6(3)(c) of the CCR, 2004, we find that the Appellant has produced certain reconciliations by way of additional submissions which were not produced before the lower authorities. Since the entire issue in this regard revolves around the calculations as submitted by the Appellant, we deem it fit to remand the matter to the Adjudicating authority to verify the correctness of the calculations of the Appellant after providing an opportunity of being heard and thereon pass a reasoned and speaking order for the same. The Appellant will be at liberty to produce all relevant statements and records as may be required during such remand proceedings. Thus to the above extent the appeal is allowed by way of remand to the adjudicating authority.

5. As regards the last issue of payment of interest on the excess Cenvat credit availed by the Appellant on capital goods in the first year of purchase and also penalty being in violation of Rule 4(2)(a) of the CCR, 2004, we find that the matter is squarely covered by the

judgment of the Hon'ble Karantaka High Court in the case of COMMISSIONER OF C. EX. & S.T., BANGALORE Versus BILL FORGE PVT. LTD. [2012 (26) S.T.R. 204 (Kar.)] wherein it was held by the Court that –

> "***21.*** *Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly*."

6. In the instant case of the appellant it is not disputed that the said amounts has been utilised by the Appellant also, hence considering the above we are of the opinion that interest is payable by the Appellant for the amounts utilised towards payment of service tax from the date of availment till the due date of availment and for the purposes of computation of the same, we remand the matter to the adjudicating authority. As regards penalty, we are of the view that since the demand of Cenvat credit itself has been dropped in the adjudication proceedings, the question of imposition of penalty under Rule 14 of the CCR, 2004 does not arise and we order accordingly.

In view of the above discussions, we pass the following order :-

(i) The demand of Rs.93,62,730/- on account of ISD distribution is set aside.

(ii) Regarding excess credit availment of Rs.1,56,70,418/- under Rule 6(3)(c) of Cenvat Credit Rules, the matter is remanded to the Adjudicating authority for verification of the calculations filed by the Appellant.

(iii) The Appellant is liable to pay interest as applicable on the above amount.

(iv) All penalties are set aside.

The appeal is thus disposed of in the above terms.

(Order pronounced in the open court on 19/05/2022)

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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