IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

S.Tax Appeal No.75867 of 2018

(Arising out of Order-in-Appeal No.327/S.Tax-I/Kol/2017 dated 27.11.2017 passed by Commr. of CGST (Appeal I), Kolkata)

M/s Nexgen Trade Services
2,Khetra Das Lane,
Kolkata - 700012

Applicant (s)

VERSUS

Commr. of CGST, Kolkata North
180, Shantipally,
Rajdanga Main Road,
Kolkata-700107

Respondent (s)

APPERANCE :

Shri S. K. Goyal, C.A. for the appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75424/2019

DATE OF HEARING : 03.04.2019
DATE OF DECISION : 03.04.2019

PER P.K.CHOUDHARY :

The facts of the case in brief are that the appellant is a partnership firm. An investigation was conducted by the Officers of Survey, Intelligence & Verification (SIV) of Service Tax Department. Pursuant to such investigation, show-cause notice dated 17.10.2014 was issued alleging irregular availment of cenvat credit. The Adjudicating Authority disallowed the cenvat credit for the period 2009-10 and also imposed penalty of equal amount under Section 78 of the Finance Act, 1994 read with Rule 15 (3) of Cenvat Credit Rules, 2004 and penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

2. On appeal, the ld.Commissioner (Appeals) rejected the appeal filed by the assessee. Hence the present appeal before the Tribunal.

3.1 The ld.Counsel appearing on behalf of the appellant, submits that the appellant has not contravened any Rules as made under Cenvat Credit Rules, 2004 and duly availed cenvat credit, which should not have been denied to the appellant on the basis of vague assumptions. He further submits that for the purpose of output service availed the input services of M/s Sakshi Tradelink Pvt. Ltd., the appellant had taken the credit on the basis of invoices issued by them in respect of service tax paid. Regarding allegation against M/s Sakshi Tradelink Pvt. Ltd., the ld.Counsel for the appellant, submits that copies of invoices/bills issued by M/s Sakshi Tradelink Pvt. Ltd. and copies of their Ledger Accounts in their Books of Account and also their Bank Statements, reflected the payments made by Cheque. He submits photo copies of Form 16A as issued by the appellant to M/s Sakshi Tradelink Pvt. Ltd. and a Certificate from M/s Sakshi Tradelink Pvt. Ltd. along with photo copies of GAR-7 Returns, which shows payment of service tax collected by M/s Sakshi Tradelink Pvt. Ltd. from the appellant. Further, he submits copies of e-filing status from the MCA Portal, which shows that they have filed their annual returns upto 31st March, 2018. The submission of the ld.Counsel is that in view of the aforesaid documents, it is quite evident that the Company is an active Company and they have complied with all the statutory obligations before all the authorities i.e. Income Tax Law, Company Law, Service Tax Law etc. It is also submitted that they have received intangible services and have kept against bills/invoices issued by service provider and thus the same are supported by the evidence on record. In support of his submission, he relied upon the judgement of the Hon'ble Allahabad High Court in the case of CCEx. & S. Tax Vs. M/s Juhi Alloys Ltd. reported in 2014 (302) ELT 487.

3.2 The ld.Counsel also submits that they are not disputing the demand of Rs.21,578/-, which was confirmed in the adjudication order along with interest and equal amount of penalty was imposed under Section 78 of Finance Act, 1994. He submits that they have paid the entire amount of demand of Rs.21,578/- along with interest of Rs.21,501/- on 15.02.2016, which stands appropriated by the Adjudicating Authority vide Corrigendum dated 25.05.2016.

4. The ld.D.R. on behalf of the Revenue, reiterates the order of the lower authorities and made the Bench go through at Page 80 of the Appeal Paper Book, which is a part of the Order-in-Original, wherein the statement of Mr.Sandip Khan, one of the partner of the appellant firms stands extracted. It is his submission that in view of the statement of the partner of the appellant firm, they have not received the services physically and hence, are not liable to avail cenvat credit.

5. Heard both sides and perused the appeal records.

6. I find that the appellant's firm in order to provide services to M/s Century Pulp & Paper for procurement of EPCG Licenses from DGFT, Kolkata, had availed the services of M/s Sakshi Tradelink Pvt. Ltd. represented by Mr.Rajesh Singh. I observe from the document filed by the ld.Counsel that M/s Sakshi Tradelink Pvt. Ltd. is regularly complying with all the statutory liabilities before various Department and their name is also portal all the Ministries of Company Affairs, which shows that they have filed their Annual Returns and Statements upto 31st March, 2018. It is also showed their registered office and other details. Copies of the Bank statement of the Appellant Firm reflect payments made to M/s Sakshi Tradelink Pvt. Ltd..

7. I find that the Hon'ble Allahabad High Court in the case of M/s Juhi Alloys Ltd. (supra), have dismissed the Departmental Appeal, where similar issue was raised by the Department in respect of the invoices, on which cenvat credit was availed. In this regard, the relevant paras are reproduced below :

> *"**7.** In the present case, both the Commissioner (Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he has taken the Cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. Admittedly,*

in the present case, the assessee was a bona fide purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the present case, was found to have duly acted with all reasonable diligence in its dealings with the first stage dealer.

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394 (Jhar.), where it was held as follows :-

"... Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."

8. *The judgment of the Division Bench of the Himachal Pradesh High Court in A.B. Tools Limited v. Commissioner of Central Excise - 2010 (256) E.L.T. 382 (H.P.), on which reliance has been* *placed by the revenue, does not indicate that any contrary view of the law has been taken.*

9. *Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken Cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee".*

8. It is my considered view that the idea of introducing cenvat credit had a preconceived motive of reducing cascading effects of indirect taxes, as a result of which, the ultimate consumers will have final products and services at a much lower price. The idea was conceived by the Government in the form of introducing Cenvat Credit Fules, 2004. The basic conditions of allowing credit was that the person, who is willing to take such credit, , should have had paid the taxes to the Government Exchequer.

9. By respectfully following the judgement of the Hon'ble Allahabad High Court as stated above, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential relief to the appellant, if any.

10. Regarding penalty of Rs.21,578/-, since the appellants have paid the entire amount of demand along with interest, which is also almost equal to the amount of demand, it is my considered view that no penalties should be imposed and accordingly, the penalties are set aside.

(Dictated and pronounced in the open court.)

Sd/
(P. K. Choudhary)
Member (Judicial)

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