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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.1 of 2009

[Arising out of Order-in-Original/ST/Shillong No.10/2008 dated 25.09.2008 passed by Commr. of Central Excise, Shillong]

M/s B.S.N.L.
GMTD, Nagaland, SSA, Dimapur

Appellant

VERSUS

CCEx., Shillong
Morello Compound, M.G.Road, Shillong

Respondent

APPERANCE :

Shri Avra Majumdar, Advocate for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.S.GARG, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.75256/2020

DATE OF HEARING : 06.02.2020
DATE OF DECISION : 06.02.2020

PER S.S.GARG :

The present appeal is directed against the impugned order dated 25.09.2008 passed by Commissioner of Central Excise, whereby the Commissioner has confirmed the demand along with interest and equal penalty under Section 78 of the Finance Act, 1994.

2. Briefly stated the facts of the case are that the appellant is engaged in providing telephone services from their business premises situated at Nagaland, availing the cenvat credit on input service and on capital goods as per Cenvat Credit Rules, 2004. A show-cause notice dated 22.01.2008 was issued to the appellant alleging that the appellant has availed cenvat credit of Rs.2,69,12,813/- on the basis of improper documents and the appellant has also failed to submit proper

valid documents at the time of verification by the Central Excise Officers. Further, a cenvat credit of Rs.2,24,66,759/- was availed by the appellant on Customs duty paid on imported goods instead of counter-veiling duty. The show-cause notice was also sought to recover the total amount of Rs.4,93,79,572/- allegedly taken improper credit along with interest and penalty. After following the due process, the Commissioner vide impugned order, confirmed the demand of cenvat duty of Rs.68,12,499/- only along with interest under Rule 14 of the Cenvat Credit Rules, 2004 and also imposed an equal amount of penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994. The appellants have paid the duty along with interest and has only challenged the imposition of penalty under Section 78 of the Finance Act, 1994 in the present appeal.

3. Heard both sides and perused the records.

4. The Ld.Counsel, appearing on behalf of the appellant, submitted that the appellant has availed cenvat credit on the basis of documents and the said documents were also produced before the Department at the time of verification. He further submitted that the appellant has finally admitted that they have wrongly taken the cenvat credit of Rs.68,12,499/-, which was also paid along with interest and the same is not in dispute. He further submitted that the appellant is a Public Sector Undertaking and there is no intention to evade payment of service tax. He further submitted that the penalty has been imposed in mechanical manner without considering the spirit of Section 78 of the Finance Act, 1994. He further submitted that there is nothing in the order that such wrongful availment was intentional and willful. He also submitted that the appellant is a Government of India Undertaking and no malafide intention can be imputed on the appellant to evade payment of service tax. In support of this submissions, he relied on the following decisions :

(i) CCEx. Vs. Nisha Industrial Services : 2008 (14) STT 208 (CESTAT-SMB) ;

(ii) FIIT Jee Ltd. Vs. CST : 2007 (6) STT 334 (CESTAT) ;

(iii) Punjab Ex-Servicemen Copn. Vs. CCE : 2009 (18) STT 121 (CESTAT) ;

(iv) Punjab Small Industries & Exports Corpn. Ltd. Vs. CCE : 2009 (19) STT 260 (CESTAT).

5. On the other hand, the Ld.A.R. for the Revenue, defended the impugned order.

6. After considering the submissions from both sides and on perusal of records, we find that in the present case, it is un-disputed that the appellant has reversed wrongfully availed cenvat credit along with interest and in the present case, they are only contesting equal penalty imposed under Section 78 of the Finance Act, 1994. Further, we find that the appellant is a Government of India Undertaking and no malafide intention can be presumed against the appellant. Further, we find that there is nothing in the impugned order regarding suppression of material facts with intent to evade tax. Further, we find that the decisions relied upon by the appellants cited (supra), are fully applicable in the present case. In these decisions, it has been consistently held that in cases of statutory Government Body, there could not be presumed any malafide intention to evade payment of tax. Hence, imposition of penalty is not sustainable. Consequently, we allow the appeal in so far it relates to imposition of penalty, which is in dispute in the present appeal.

7. In the result, the appeal is disposed off in the above terms.

(Operative part of the order was pronounced in the open court)

(S.S.Garg)
Member (Judicial)

(P.V.Subba Rao)
Member (Technical)

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