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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.2 of 2009 & CO No.41 of 2009

[Arising out of Order-in-Original/ST/Shillong No.09/2008 dated 23.09.2008 passed by Commr. of Central Excise, Shillong]

M/s B.S.N.L.
GMTD, Near Hydari Park, Shillong

Appellant

VERSUS

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

Respondent

APPERANCE :

Shri Sanjiv Das, C.A. 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…75267/2020

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 23.09.2008 passed by Commissioner of Central Excise, whereby the Commissioner has confirmed the demand along with 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. The input services of the appellant comprises both taxable and non-taxable services and they are availing cenvat credit on input/input services/capital goods as per Cenvat Credit Rules, 2004. The appellant utilized the cenvat credit in the months of March, 2005 and March, 2006 amounting to Rs.53,19,510/- over the permissible limit in terms of Rule 6 (3)(c) of

Cenvat Credit Rules, 2004. A show-cause notice was issued to the appellant proposing to demand, cenvat credit wrongfully availed and utilized along with interest and penalty. After the adjudication order was passed, the appellant paid the duty along with interest and has contested only imposition of penalty by filing the present appeal.

3. Heard both sides and perused the materials on records.

4. The Ld.Counsel appearing on behalf of the appellant, submitted that the appellant had violated the provisions of Rule 6 (3)(c) of Cenvat Credit Rules, 2004 without any intention to evade payment of service tax. He further submitted that the appellant being a Public Sector Undertaking, there is no intention to evade payment of service tax. He further submitted that it is not in dispute that the appellant has reversed wrongly availed cenvat credit along with interest. He also submitted that the penalty has been imposed in a 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. Cross Objection also gets disposed off.

(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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