

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76450 of 2018

(Arising out of Order-in-Appeal No.30/S.TAX-I/KOL/2018 Dated 31.01.2018 passed by Commissioner of CGST & Central Excise, Kolkata South Commissionerate.)

M/s. Bureau of Indian Standards

(1/14, CIT Scheme, VIIM, VIP Road,
Kakrugachi, Kolkata, West Bengal-700054)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Kolkata North
Commissionerate**

(180, M. S. Building, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Mr. Vikash Agarwal, CA for the Appellant

Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75801/2023

Date of Hearing : 20 June 2023

Date of Decision : 20 June 2023

PER R. MURALIDHAR

The Appellant, Bureau of Indian Standards is a part of Ministry of Consumer Affairs. They were issued Show Cause Notice on the following grounds:-

- (a) They have provided Intellectual Property Right services.
- (b) They have provided Commercial Training or Coaching Services.
- (c) They have availed excess Cenvat Credit.

2. After due process, the Adjudicating Authority confirmed the demands for all the three accounts. On appeal, the Commissioner (Appeals) has dropped the confirmed demand in respect of the 'Intellectual Property Services'. He upheld the confirmed demand on account of 'Commercial Coaching or Training Services' and towards the excess Cenvat Credit taken up on them. Being aggrieved by the Impugned OIA, the Appellant is before the Tribunal.

3. The Learned Chartered Accountant appearing on behalf of the Appellant submits that the demand towards 'Coaching or Training Services' is to the extent of Rs.1,06,176/-. The demand in respect of excess Cenvat

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Credit taken by them is to the extent of Rs.1,94,600/-. He submits that they had produced Chartered Accountant's Certificate before the Adjudicating Authority to the effect that they have paid excess Service Tax to the extent of Rs.14,27,916/- during the period 2005 to 2010. He had also brought to the notice of the Adjudicating Authority that Service Tax payment of Rs.12,720/- on account of Conference Consulting and Training Fees has already been deposited with the Service Tax Department by way of GR-7 Challan which was not considered in the Show Cause Notice, when demand was made. As per the Appellant, the demand of Rs.1,06,176/- should be confined to Rs.93,456/-. Without contesting the demand on merits, they had requested the Adjudicating Authority to adjust Rs.93,456/- against the excess Service Tax amount of Rs. 14,27,916/- paid by the Appellant during 2005 to 2010. They did not contest the fact that they had taken excess Cenvat Credit of Rs.1,94,600/-. The Learned Chartered Accountant submits that if the refund due to the Appellant is considered, as on date after paying all dues to the Department towards confirmed demands, still they would be eligible to get part of the refund amount. Therefore, he prays that the present Appeal may be allowed on this ground.

4. The Learned AR submits that the Adjudicating Authority has gone through the Chartered Accountant's Certificate and has held that the issue as to whether the Refund of Rs.14,27,916/- is to be granted or nor is not part of the SCN proceedings on hand. Therefore, as the Appellant did not contest the demand an account of Coaching and Training Services" and towards wrong availment of Cenvat Credit, the Adjudicating Authority has confirmed the entire demand. On appeal, the Commissioner (Appeals) has gone through factual details and dropped the demand in respect of Intellectual Property Services. The AR reiterates the findings of the Commissioner (Appeals) and justifies the confirmed demands. He prays that the present Appeal may be dismissed.

5. Heard both sides and perused the documents.

6. In respect of the demand of Rs.1,06,176/-, the Appellant is not contesting the same. However, they maintain that one challan for amount of Rs.12,720/- was not considered while the proceedings were taken up for Hearing by both the Authorities. As per the Appellant, the demand should

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be confined to Rs.93,456/-. On specific query from the Bench as to whether the copy of this Challan is available for verification, the Learned Chartered Accountant submits that this Challan has been mis-placed and the same is not available nor the same has been enclosed along with Appeal Papers. In such a case, the Bench has no means to verify the veracity of this claim. Therefore, the Appeal to the extent of Rs.106,107/- stands dismissed.

7. In respect of the confirmed demand of excess Cenvat Credit availed to the extent of Rs.194,600/-, since the Appellant is not contesting the same and agrees that due to clerical mistake the Cenvat Credit was taken twice, the Appeal on this count also stands dismissed.

8. Coming to their prayer that they have to receive Rs.14,27,916/- from the Department, as to whether this amount is refundable to them or not is an issue totally different from the present proceedings. It is for the Appellant to file the refund claim along with supportive documentary evidence and it is for the Adjudicating Authority to consider as to whether the claim is eligible or not. Therefore, their prayer that this amount of 14,27,916/- is to be considered against the present confirmed demand is not legally sustainable. Therefore, I reject their prayer on this account.

9. The Appeal stands dismissed with the following conditions:-

(i) The Appellant should deposit Rs.1,06,107/- and 1,94,600/- along with applicable interest.

(ii) Considering the fact that Appellant is working under the Ministry of Consumer affairs, the penalty imposed is reduced to 25% subject to the Appellant paying the Service tax amount along with interest within 30 days from the date of receipt of communication of this order.

(iii) If the Appellant fails to pay the confirmed Service Tax demand along with interest within this period, the penalty is required to be paid in full.

10. The Appeal is disposed off thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja