

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Service Tax Appeal No. 77437 of 2019

(Arising out of Order-in-Original No. 01/ADJ/GST/COMMR/DMR/2019 dated 07.06.2019 passed by Commissioner of CGST & Central Excise, Dimapur.)

M/s Bharat Sanchar Nigam Limited,

O/o The Chief General Manager, North East II Circle,
OCB Telephone Exchange Building, Dimapur-797112.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Dimapur Commissionerate,

(5th Floor, Agarwal Tower, Circular Road, Dimapur, Nagaland-797112.)

..Respondent(s)

APPEARANCE :

Shri N. D. Saha, Advocate for the Appellant

Shri A. Roy, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75926/2023

DATE OF HEARING : 05.06.2023

DATE OF PRONOUNCEMENT: 28th June, 2023

PER K. Anpazhakan :

BSNL, Dimapur (The appellant), during the period of April'16 to June'17 filed three ST-3 Returns. In respect of April-September'16 and April-June'17, they filed Revised Returns electronically on the portal but for the period Oct-Mar 2016-17, they could not file the revised ST-3 Return online due to system error on the portal. Therefore, they were compelled to file the revised return manually on 04.09.2017 for the period Oct-Mar 2016-17. They intimated the department about the manual filing of the return vide letter dated 31.08.2017 which was duly informed to the departmental authorities. The tax liability calculated by the officers without considering the manual return is as below:

Period	S. Tax Payable	S. Tax Paid	Short Payment
Oct-Mar	133410210	69142474	64267744

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2016-17			
April-June 2017-18	48884998	48340640	544358
Total			64812102

2. Based on the said Audit report, the departmental authority issued a Show Cause Notice dated 14.12.2018 demanding short payment of duty of Rs.6,42,67,744/- for the year 2016-17 and Rs.5,44,358/- for the year 2017-18. The Notice also alleged irregular availment of Cenvat Credit of Rs.2,97,91,011/- for the period April-June, 2017-18. The Notice proposed for recovery of the above amounts under Section 73 of the Finance Act, 1994 along with interest and penalties under Section 75 & 76/78 of the said Act. The appellant admitted liabilities of Rs. 3,07,295/- and paid the same under GAR-7 Challan dated 12.03.2019.

3. The Notice was adjudicated by the Commissioner vide Order-in-Original dated 07.06.2019, wherein he confirmed the demands made in the Notice. He also demanded interest and imposed penalty of Rs.94,60,311. Aggrieved against the impugned order, the Appellant filed the present appeal.

4. In their submission, the Appellant submits that the Audit Report arising out of the said CERA Audit is the basic cause of action for the present proceedings. The CGST Authority has mechanically raised the said allegation in the impugned Show Cause Notice and also confirmed the same without going through the Revised ST-3 Returns already in possession of the department. They have filed a revised return manually for the period Oct-Mar 2016-17 which was not considered by CERA Audit. The Ld. Commissioner has failed to appreciate the payments made by them and the Revised Return submitted manually prior to issue of the demand notice

5. The appellant has been wrongfully disentitled the benefit of Cenvat Credit for mere technical / clerical errors which were duly rectified by filing the revised return manually. Availment of input Cenvat Credit has been wrongfully denied even when such credit shown under the revised return, that was accepted by the Range Officer. The Ld.

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Commissioner has failed to appreciate that the Cenvat Credit Rules, 2004 allows a specified time period of one year for availing Cenvat Credit and the appellant claimed such credit under the Revised Return well within such statutory period of one year. Mere technical error to show the credit on the original return cannot take away such substantial benefit allowed under the statute.

6. The Ld. Commissioner has confirmed all the allegations on the premises of presumption and assumption contrary to evidence on record and have discarded all lawful materials and arguments put forth by them.

7. The Ld. A.R. Reiterated the findings of the adjudicating authority.

8. Heard both sides and perused the appeal records.

9. We observe that the demand has been raised based on CERA Audit report. CERA authorities audited only the returns submitted by the Appellant electronically. It is observed that for the period Oct-Mar 2016-17, the Appellant could not file the revised ST-3 Return online due to system error on the portal. Therefore, they filed the Revised Return manually on 04.09.2017 for the period Oct-Mar 2016-17. They intimated the department about the manual filing of the return vide letter dated 31.08.2017 which was duly received by the departmental authority. However, this was not presented before CERA and hence CERA authorities found short payment of duty during this period. We observe that the manual filing of the return by the Appellant and intimation given to the department about the manual filing vide letter dated 31.08.2017 was not disputed by the department. It is not the allegation of the department that there was short payment even after considering the manually filed return for the period Oct-Mar, 2017.

9. As per the summary of the Revised Return for the period October 2016 to March 2017 filed manually, there was no short payment of Service Tax and no irregular availment of CENVAT Credit. We observe that CERA officers have observed short payment during this period only because of not taking into consideration of the manually filed return for the period Oct-Mar, 2017. We observe that for the period Oct-Mar 2016-17, they could not file the revised ST-3 Return online due to

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system error on the portal. Therefore, they were compelled to file the revised Return manually on 04.09.2017 for the period Oct-Mar 2016-17. They intimated the department about the manual filing of the return vide letter dated 31.08.2017 which was duly informed to the departmental authorities. Hence, the Appellant cannot be faulted with for filing the revised return manually. Since, there was no allegation of short payment even after considering the manually filed return, we hold that the demand made without considering the manually filed return is not sustainable.

10. Regarding the next issue of irregular availment of cenvat credit of Rs 2,97,91,011/- we observe that this irregular availment of credit issue was also raised because of non consideration of the manually filed return. Cenvat Credit Rules, 2004 allows a specified time period of one year for availing Cenvat Credit and the appellant claimed such credit under the Revised Return well within such statutory period of one year.

11. In the return filed for the period April 2017 to June 2017 Rs.2,97,91,011/- was shown as the opening balance of Cenvat Credit though there was no closing balance in the return of the period October 2016 to March 2017. In the revised return filed manually, they have corrected this error. Since the revised return for Oct 2006-Mar 2007 filed by them manually was not taken into consideration, the department alleged that the Credit amounting Rs.2,97,91,011/- was irregular. We observe that since the Appellant have taken the credit within the permissible period of one year and filed the revised return, they are entitled for the credit. The substantial benefit of Cenvat credit eligible to them cannot be denied merely on the ground of technical formalities.

12. The Appellant stated that the Id Commissioner has confirmed the demands only on the basis of assumptions and presumptions, which is evident from Para – 2 of the impugned Order . For ready reference the para 2 of the order is reproduced below:-

“Now there is a doubt regarding the assessable value and tax liability shown in their revised return which is much lower than

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assessable value and tax liability shown in their original return. They submitted at the time of personal hearing that the payment is usually done by taking the average and on the higher side to avoid short payment since the exact figures were not available at the time of payment, If that would have been the fact then the payment made in the original return should have been higher than the tax liability shown in the revised return. For this anomaly, they could not produce the valid reasons for showing less assessable value/tax liability in their revised return. Therefore, it is crystal clear **that they might have manipulated the assessable value** in their revised return in as much as towards the payment made at the time of Original Return.
.....”

13. We observe that the Commissioner arrived at the conclusion that that there was short payment only on the assumption that the Appellant might have manipulated the assessable value in the revised return. There is no concrete evidence brought on record to substantiate the claim of manipulation of the assessable value by the Appellant. In the absence of any such evidence of manipulation, we hold that the demand confirmed in the impugned order is not sustainable. The penalties imposed on the Appellant also liable to be set aside.

14. In view of the above discussion, we hold that the impugned order is not sustainable. Accordingly, we allow the appeal filed by the Appellant.

(Pronounced in the open court on.....28th June, 2023.....)

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

Sd/-
(K. Anpazhakan)
Member (Technical)

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