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

Service Tax Appeal No. 311 of 2012

(Arising out of the Order-in-Appeal No. 09/ST/Denovo/Commissioner/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Patna.)

M/s Bharat Sanchar Nigam Ltd,
(O/O GMTD, Near Head Post Office, M.G. road, Pin-812001 (Bihar)

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Patna,
3rd Floor, C. R. Building, (Annexee), Birchand Patel Path, Patna,

. ...**Respondent(s)**

APPERANCE :
Shri Akash Sharma & Shri A. K. Shrivastava, both Advocates for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No…77671/2023

DATE OF HEARING : 08.12.2023
DATE OF DECISION : 08.12.2023

PER K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Appeal dated 30.03.2012, passed by Commissioner (Appeals). In the impugned order, the Ld. Commissioner (Appeals) has dealt with the following two issues:

(i) An amount of Rs.12,88,587/- paid by the Appellant vide Challan dated 18.04.2006 and

(ii) The eligibility of Cenvat credit amounting to Rs.20,18,452/-

2. Regarding the amount of Rs.12,88,587/- paid by the Appellant vide Challan dated 18.04.2006, it is observed that the Appellant wanted to adjust this amount for the year 2006-07, whereas the department contended that this payment was meant for the Financial Year 2005-06. During the hearing held on 26.09.2023, the adjudicating authority was directed to verify the

correctness of the claim of the Appellant and file a report. Accordingly, the adjudicating authority filed a report dated 01/11/2023, as per which the amount of Rs.12,88,597/- paid vide Challan No.33 dated 18.04.06 pertained to the year 2005-06. The Ld. counsel for the Appellant submits that this Tribunal has already remanded the appeal pertained to the year 2005-06 for the purpose of reconciliation. As per the present report, there is a shortfall in payment of Service Tax amount of Rs.56,033/- for the year 2005-06. The Ld. Counsel submits that the reconciliation is required to be done for the Financial Years 2005-06 and 2006-07 together to arrive at the correct liability for both the financial years. For that purpose, he requested to remand this appeal also to the adjudicating authority with a direction to reconcile the payments for both financial years together. We agree with the submission of the counsel. Accordingly, we remand the matter to the adjudicating authority to reconcile the payments for both the Financial Years 2005-06 and 2006-07 together.

3. Regarding the next issue of eligibility of Cenvat credit amounting to Rs.20,18,452, we observe that the report dated 01.11.2023 has examined the Cenvat credit on capital goods availed by the Appellant and submitted that the Appellant failed to produce any Cenvat credit register/record regarding the capital goods credit availed and accordingly the report concluded that the Cenvat credit is not admissible to the Appellant. A perusal of the report reveals that the Appellant has produced various invoices based on which the capital goods credit was availed by them. We observe that during the relevant period there were specific records prescribed for availing capital goods credit. The Ld. Counsel for the Appellant submits that the invoices clearly establish that the Appellant has received the capital goods as per the invoices listed in the report. They will be able to establish that the capital goods were utilzed for providing the output services rendered by them. Accordingly, he prayed for remanding this issue also to the original adjudicating authority and give

another opportunity for them to prove its admissibility. We observe that the Appellant has the invoices showing the receipt of the capital goods. The credit is proposed to be denied only on the procedural ground of non production of the records maintained. As the issue pertained to the year 2005-06 and 2006-07, in the interest of justice we remand this issue also to the adjudicating authority to give another opportunity to the Appellant to submit all the relevant documents to establish its admissibility. Accordingly, we remand the issue back to the adjudicating authority to examine the admissibility of Cenvat credit afresh based on the documents submitted by the Appellant.

4. In view of the above discussion, we set aside the impugned order and remand the matter to the adjudicating authority with the following directions:

(i) The adjudicating authority to reconcile the payments for both the Financial Years 2005-06 and 2006-07 together and pass appropriate orders after reconciliation.

(ii) The adjudicating authority to examine the admissibility of Cenvat credit afresh based on the documents submitted by the Appellant.

(iii) The Appellant is directed to submit all relevant documents within one month from the date of receipt of this order. The adjudicating authority to follow the principles of natural justice and pass appropriate orders on both the issues. As it is a very old issue, the adjudicating authority is directed to pass appropriate orders within three months from the date of receipt of this order.

(iv) The appeal is disposed of on the above terms.

(Dictated and pronounced in the open Court)

(R. Muralidhar)
Member (Judicial)

(K. Anpazhakan)
Member (Technical)

Tushar