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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76629 of 2014

(Arising out of Order-in-Original No.16/ST/Denovo/COM/2014 dated 10.09.2014 passed by Commissioner of Central Excise & Service Tax, Patna)

M/s Bharat Sanchar Nigam Limited
(O/o TDM, Ujjain Tola, Betiah)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna
C.R.Building, Bir Chand Patel Path, Patna, Bihar

Respondent

APPERANCE :

Shri Alok Kumar Shahi, Advocate for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75685/2024

DATE OF HEARING : 15 .04.2024
DATE OF DECISION : 15 .04.2024

Per R.Muralidhar :

The appellant being a reputed Public Sector Undertaking, Government of India, is engaged in the business of providing telephone services during the period November, 2002 to September, 2006. They have taken cenvat credit amounting to Rs.13,92,098/-. The Department issued show-cause notice on the ground that they are ineligible for taking this cenvat credit.

2. Subsequently, the Department confirmed the demand. The matter reached this Tribunal. The Tribunal vide its Final Order No.S-264/Kol/2011 & A-290/Kol/2011 dated 20.09.2011, remanded the matter to the adjudicating authority for verification of the documentary evidences and to pass a considered decision. The Adjudicating Authority

vide the impugned Order-in-Original No.16/ST/Denovo/Commr./2014 dated 10.09.2014, allowed cenvat credit except for Rs.1.00 lakh. He confirmed the demand of Rs.1.00 lakh along with the interest and also imposed the penalty of Rs.3,13,200/- under various Sections.

3. Aggrieved from the said order, the appellant is before us.

4. The ld.Counsel for the appellant, submits that they have taken cenvat credit of Rs.1.00 lakh based on the letter issued by their Patna Office. During the last hearing, he was given an opportunity to substantiate their claim with documentary evidences towards cenvat credit of Rs.1.00 lakh under the said letter dated 30.03.2005. However, he is not in a position to provide any other documentary evidences as to how an amount of Rs.1.00 lakh towards cenvat was arrived at by their Patna Office.

5. Since the matter pertains to the year, 2005, we do not see any justification to remand the matter to the adjudicating authority for once again verifying these facts. The ld.Advocate for the appellant has also admitted that he is not in a position to file any other documentary evidences in support of availment of cenvat credit of Rs.1.00 lakh.

6. Accordingly, we hold that the appellant is liable to pay Rs.1.00 lakh along with interest.

7. At this stage, the appellant submits that they have paid interest of Rs.95,866/- in the normal course as per the letter issued by the Superintendent. We direct the adjudicating authority to verify these facts and appropriate this amount against an amount of Rs.1.00 lakh to be made now in case he finds that the interest is not paid on account of any other shortfall.

9. Considering the fact that the appellant is a reputed Public Sector Undertaking working under the Government of India and they do not stand to gain anything by evading payment of any Excise duty, we set aside the penalties imposed on the appellant.

10. Thus, the appeal is partly allowed.

(Dictated and pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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