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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 70771 of 2013

(Arising out of Order-in-Original No.45/ST/Commr./2013 dated 28.03.2013 passed by Commr. of Central Excise & Service Tax, Ranchi)

M/s Bharat Sanchar Nigam Limited
(General Manager, O/o GMTD Ranchi, Bharat Sanchar Nigam Limited
Telephone Bhawan, Near Shaheed Chowk, Main Road, Ranchi-834001 (Jharkhand))

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Ranchi
(Central Revenue Building, 5A, Main Road, Ranchi-834001)

Respondent

With

Service Tax Appeal No. 70912 of 2013

(Arising out of Order-in-Original No.45/ST/Commr./2013 dated 28.03.2013 passed by Commr. of Central Excise & Service Tax, Ranchi)

Commr. of Central Excise & Service Tax, Ranchi
(Central Revenue Building, 5A, Main Road, Ranchi-834001)

Appellant

VERSUS

M/s Bharat Sanchar Nigam Limited
(O/o, GMTD Ranchi, Near Shaheed Chowk,
Main Road, Ranchi-834001 (Jharkhand))

Respondent

APPEARANCE :
Mr. Ajoy Chhabra & Mr. Arvind Modi, both CA for the Appellant/Respondent
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent/Appellant

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

FINAL ORDER NO.76105-76106/2024

Date of Hearing : 11 June 2024
Date of Decision: 11 June 2024

Service Tax Appeal No. 70771 of 2013 & 70912 of 2013

PER R. MURALIDHAR:

After due process, the Adjudicating Authority has confirmed, the following demands:-

SI No.	Grounds of Addition	Amount	Appellants Contention
1.	Service Tax Short Paid on Services Provided	3381407/-	Not accepted. Reconciliation provided by the appellant has not been considered. **Column D** of **Chart-F** in the OIO has stated wrong figures of September 2006 and October 2006 (Refer Annexure-1 submitted as part of SCN Reply and attached herewith-Page -77 of Appeal Memo). When correct figures are put in CHART-F, the taxable Value on page 23 of O-I-O will be Rs.37,85,20,821/- and not 40,99,65,014/-
2.	Service Tax Short Paid on Value Added Services	25635/-	Amount paid Rs.25715/- proof enclosed.
3.	Interest Short Paid	99051/-	Not Accepted. Payment was made by adjustment from Cenvat Account on due date but the department has picked up different date.
4.	Interest Short Paid	14236/-	Accepted and being offered for appropriation from Pre-Deposit Amount
5.	Cenvat Credit Claimed on Basis of Photocopy of Invoices	19864799/-	Cenvat Allowable on Photocopy of the Invoices. Appellant Relies on the following Judgments: **DKNV Engineering Private Limited Vs. Commissioner of Central Excise & Service Tax, Daman [(2023)2 Centax 41 (Tri.-Ahmd)] Pepsico India Holding (P) Ltd. Vs. Commissioner of Central Excise, Mumbai-II [(2017) 77 taxmann.com 229 (Mumbai-CESTAT)]**
6.	Cenvat Claimed on lack of Registration, Multiple SI. No. of Invoice Etx.	872542/-	
7.	Cenvat Claimed on lack of Registration No. of Supplier	1983274/-	
8.	Cenvat Credit claimed on invoices in which name of the recipient is missing, service tax amount not shown separately, food bills etc.	94082/-	
9.	100% Cenvat Credit claimed on Capital Goods in which the capital Goods were purchased (50% out of Total amount of Rs. 12401528/-	6200764/-	Cenvat Credit is in order and Cannot be disallowed however interest liability arises for the intervening period. Appellant Rely on: **NIDHI PIPES LTD. Versus COMMISSIONER OF C.EX., CHANDIGARH-II – 2016 (343) E.L.T. 1014 (Tri.-Chan)**

10.	Cenvat Credit Availed but Documents Misplaced	123387/-	

2. We find that towards Serial No. 1 to 8 of the above Table, the Adjudicating Authority is required to verify the documentary evidence to be produced by the Appellant in support of their claim. Hence, we remand the matter to the Adjudicating Authority in respect of these 8 issues.

3. In respect of Serial No. 5, the Appellant is directed to submit the details of Invoices and description of goods and the details of such goods being taken in their assets records which should be duly certified by the Chartered Accountant. If it is found after verification that the goods in question have been received by the Appellant, the Cenvat Credit should be allowed to them irrespective of whether they have only photocopies of the Invoices or originals of the same.

4. In respect of Serial No. 6, 7 & 8, opportunities should be given to the Appellant to prove that they have received the goods within the premises and utilized the same. If this criteria satisfied, the Adjudicating Authority is directed to allow the credit.

5. In respect of the Serial No. 9, the Appellant has taken the entire credit in respect of the Excise Duty paid on the capital goods by the vendor in a single financial year. Since they would be eligible to take the Credit of the second 50% of the Cenvat Credit in the next financial year, we direct the appellant to pay the interest for the intervening period. The penalty imposed is set aside.

6. In respect of the Serial No. 10, the Appellants have misplaced the documents. Therefore, we hold that they are not eligible for Cenvat Credit of Rs.1,23,387/- The Appellant is also required to pay interest on the same. Penalty on this amount is waived.

Service Tax Appeal No. 70771 of 2013 & 70912 of 2013

7. The learned AR submits that in respect of the same impugned order, the Department has come before the Tribunal being agitated by the dropped demand of Rs. 6,09,70,000/-. He submits that this amount has been dropped by the Adjudicating Authority holding that there have been some typographical errors in the Trial Balance vis-à-vis Show Cause Notice. The Respondent, M/s. BSNL, submits that they have proper documentary evidence that the typographical errors, if any, would not have any implication on the Service Tax demand. However, this fact has to be verified by the Adjudicating Authority, Therefore, we remand even this matter to the Adjudicating Authority. He should take into account all the details shown in Trial Balance vis-à-vis Show Cause Notice and come to conclusion after giving proper opportunity to the Respondent M/s. BSNL to present all the documentary evidence in their support.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja