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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76228 of 2014

(Arising out of Order-in-Original No. 10/S.T./Commissioner/2013 dated 11.12.2013 passed by the Commissioner of Central Excise & Service Tax, 3rd Floor, C.R. Building, Birchand Patel Path, Patna, Bihar)

M/s. Bharat Sanchar Nigam Limited **: Appellant**
O/o. TDM, Telephone Exchange Building, Hajipur – 844 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
3rd Floor, Central Revenue Building (Annexe),
Birchand Patel Path, Patna, Bihar

APPEARANCE:

Shri A.K. Shahi, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76598 / 2024

DATE OF HEARING: 06.08.2024

DATE OF DECISION: 07.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against Order-in-Original No. 10/S.T./Commissioner/2013 dated 11.12.2013 passed by the Commissioner of Central Excise & Service Tax, 3rd Floor, C.R. Building, Birchand Patel Path, Patna, Bihar.

2. The facts of the case are that on the basis of scrutiny of records of the appellant by CERA, it was observed that the appellant had irregularly availed CENVAT Credit during the period from 2006-07 to 2010-11. Accordingly, a Show Cause Notice dated 11.11.2011 was issued to the appellant proposing to disallow CENVAT Credit amounting to

Rs.1,71,39,015/- along with interest and penalty *inter alia* alleging that the appellant had availed CENVAT Credit irregularly without the support of valid duty-paid documents and without submitting copies of relevant invoices.

2.1. The said Notice was adjudicated by the Ld. Commissioner vide the impugned order dated 11.12.2013 wherein the Ld. Commissioner has confirmed the disallowance of CENVAT Credit amounting to Rs.28,00,459/- and Rs.21,68,423/- and dropped the remaining demands raised in the Notice. The Ld. Commissioner has also demanded interest and imposed penalty equal to the demands confirmed vide the impugned order.

3. Aggrieved against the confirmation of the above demands, the appellant has filed this appeal.

4. Regarding the denial of CENVAT Credit of Rs.28,00,459/- in the impugned order, the appellant submits that out of the above amount, Rs.16,19,472/- pertains to availment of proportionate credit of central excise duty on the basis of documents issued by Circle Telecom Stores Depot (CTSD), BSNL situated at Patna who are registered as Input Service Distributor (ISD) with the Service Tax Department. The appellant submits that an ISD can distribute credit of capital goods, inputs and input services by issuing invoices and the recipients can avail the credit on the basis of the documents issued by the ISD; however, in the impugned order it has been held that the ISD can distribute only the credit availed by them on input services and the credit availed on inputs and capital goods cannot be distributed by the ISD. In this regard, the appellant pointed out that Notification No. 10/2008-C.E.(N.T.) dated 01.03.2008 allows the

transfer of credit on inputs and capital goods by an ISD with effect from 01.04.2008 and therefore, the denial of credit to this ground is not tenable.

4.1. Regarding the balance portion of the said credit which has been denied on various grounds in the impugned order by invoking the extended period of limitation, the appellant submits that being a public sector undertaking, there can be no *mala fide* intention on their part in availment of irregular credit. It is also submitted that intention to evade payment of duty has not been established in this case and hence, suppression of facts with intention to evade payment of duty does not exist in this case. Accordingly, the appellant submits that extended period of limitation cannot be invoked to deny credit to the appellant.

4.2. Thus, the appellant has prayed that the denial of credit of Rs.28,00,459/- in the impugned order deserves to be set aside.

5. Regarding the denial of credit of Rs.21,68,423/-, the appellant submits that the credit in this case pertains to the Service Tax paid in respect of "Rent-a-Cab" operator service provided by various service providers during the period 2006-07 to 2009-10.The appellant had availed credit on the basis of the bills raised by these service providers; however the Revenue alleged that the said bills raised by them did not contain the mandatory details as provided under Rule 9(2) of the CENVAT Credit Rules, 2004 and/or Rule 4A(1) of the Service Tax Rules, 1994; accordingly, it was alleged that the credit availed on the basis of such documents which did not contain the mandatory details as mentioned in Rule 9(2) of the CENVAT Credit Rules, 2004 read with Rule 4A(1) of

the Service Tax Rules, 1994 would not be eligible as credit.

5.1. In this regard, the appellant submits that the bills/invoices issued by the said service providers contained all the mandatory particulars as required under Rule 9(2) of the CENVAT Credit Rules, 2004 read with Rule 4A(1) of the Service Tax Rules, 1994. They further submitted that in this case there is no dispute relating to receipt and utilization of service by the appellant. Accordingly, they submit that the credit availed by the appellant cannot be denied only on the basis of procedural infirmities, if any. Thus, they prayed for setting aside the denial of CENVAT Credit amounting to Rs.21,68,423/- confirmed vide the impugned order.

6. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that the ld. adjudicating authority has confirmed the disallowance of CENVAT Credit to the appellant amounting to Rs.28,00,459/- and Rs.21,68,423/- by way of the impugned order.

9. The details/break-up of CENVAT Credit of Rs.28,00,459/- which has been denied by the ld. adjudicating authority in the impugned order, is as follows: -

Sl. No.	Ground(s) for disallowance	Amount of CENVAT Credit (in Rs.)
1.	Improper distribution of credit by ISD	16,19,472/-
2.	Calculation error/no supporting documents	7,18,797/-
3.	Credit not availed on the basis of valid duty-paid documents	4,45,016/-
4.	Excess credit availed/no supporting documents	17,174/-
TOTAL		**28,00,459/-**

9.1. We observe that credit to the tune of Rs. 16,19,472/-has been denied on the ground that the ISD cannot distribute the input or capital goods credit. However, we find that Notification No. 10/2008-C.E.(N.T.) dated 01.03.2008 allows the transfer of credit on inputs and capital goods by an ISD with effect from 01.04.2008. Further, we observe that there is no suppression of fact with intention to evade payment of tax established in this case. Accordingly, denial of credit availed by invoking extended period of limitation is not sustainable. Distribution of credit of capital goods, inputs and input services are allowed within the normal period of limitation vide Notification 10/2008. CE (NT) cited above. Thus, we hold that the CENVAT Credit denied to the appellant on this cunt in the impugned order is not sustainable.

9.2. With regard to the denial of credit to the tune of Rs.7,18,797/-, we observe that there were calculation errors and the same has been disallowed on the ground that no documents were submitted by the appellant for availment of this credit. We observe that there is no dispute with regard to receipt and utilization of credit for the purpose of the taxable services rendered by them. We find that the credit availed by the appellant pertains to the period 2006-07 and the Notice has been issued for disallowance of the credit in the year 2011, which is clearly beyond the normal period of limitation. As discussed in paragraph 9.1 of this order (*supra*), suppression of facts with intention to evade payment of duty has not been established in this case. Accordingly, we hold that the disallowance of credit beyond the normal period by invoking the extended period of limitation in this regard is not sustainable.

9.3. Further, credit to the tune of Rs.4,45,016/-has been denied on the basis that the documents issued by M/s. Exide are not in conformity with Rule 9 of the CENVAT Credit Rules, 2004. However, we observe that the credit availed by the appellant pertains to the year 2009 (two Bills both dated 31.05.2009). However, the Notice has been issued beyond the normal period of limitation. Accordingly, we hold that the denial of credit by invoking the extended period of limitation in this regard is not sustainable. Therefore, we hold that the credit availed by the appellant amounting to Rs.4,45,016/- by the appellant on the strength of the bills issued by M/s. Exide cannot be denied.

9.4. Regarding the denial of credit of Rs.17,174/-, we observe that the said input service credit pertains to the period from May 2010 to September 2010 and also during March 2009, which has been disallowed by invoking the extended period of limitation by way of the impugned Show Cause Notice issued on 11.11.2011. As the Notice was issued beyond the normal period of limitation, we hold that the denial of credit in this regard by invoking the extended period of limitation is not sustainable.

9.5. In view of the above, we hold that the appellant is eligible for availment of the CENVAT Credit amounting to Rs.28,00,459/-, which has been denied by the ld. adjudicating authority in the impugned order. Accordingly, the disallowance of credit in this regard is not sustainable and hence, the same is set aside.

10. Regarding disallowance of Cenvat credit of Rs.21,68,423/-, we observe that the credit pertains to 'Rent-a-cab' operator service provided by different service providers namely a) M/s Black Commando, b) M/s Rana Security Services and c) M/s Kalka Security Agency during the period 2006-07 to 2009-10. The appellant has availed the said credit on the basis of the bills raised by the above said service providers. However, the Revenue alleges that the said bills raised by these service providers do not bear mandatory details as required to be mentioned under the provisions of Rule 9(2) of CENVAT Credit Rules, 2004 read with Rule 4A (1) of the Service Tax Rules, 1994.

10.1. We find that the documents based on which credit has been availed by the appellant contains all the requisite details as mandated under Rule 9(2) of CENVAT Credit Rules, 2004 read with Rule 4A (1) of the Service Tax Rules, 1994.Thus, we observe that the invoices and bills based on which credit has been availed by the appellant are valid documents. Accordingly, we hold that the credit cannot be denied on account of procedural infirmities as alleged by the Revenue in the impugned order. The denial of credit of Rs.21,68,423/- is therefore not sustainable and hence, we set aside the disallowance of credit on this count in the impugned order.

11. Since the entire credit availed by the appellant is held to be eligible, the question of demanding interest and imposing penalties on account of irregular availment of credit does not arise.

12. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant.

(Order pronounced in the open court on **07.08.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd