

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. ST/85164/2017

(Arising out of Order-in-Original No. 37/ST-VII/CD/2016 dated 03.11.2016 passed by Commissioner of Service Tax-VII, Mumbai)

Tata Teleservices Ltd.

Appellant

Vs.

Commissioner of Service Tax-VII, Mumbai

Respondent

Appearance:

Shri D.B. Shroff, Advocate, for appellant

Shri M.K. Sarangi, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 07.01.2019

Date of Decision: 07.01.2019

ORDER No. **A/85011/2019**

Per: Dr. D.M. Misra

This appeal is filed against order-in-original No. 37/ST-VII/CD/2016 dated 03.11.2016 passed by Commissioner of Service Tax-VII, Mumbai. This is the second round of litigation before this Tribunal. In the earlier round of litigation, vide order No. A/86890-86891/16/STB dated 21.3.2016, this Tribunal

remanded the matter to the adjudicating authority making the following observation:-

“5. On a specific query from the bench, Id. Counsel submits that the credit availed on the input services the documents run to 44000 entries. In our view, the factual position needs to be reconsidered by the Adjudicating Authority by calling for the records from the appellant. Without expressing any opinion on the merits of the case, keeping all issues open, we set aside the impugned order and remand the matter to the Adjudicating Authority to factually verify the claim of the appellant by looking into the records. The appellant also shall cooperate with the authorities in providing the records as and when called for.”

2. Learned Advocate, Shri D.B. Shroff, submits that the dispute relates to wrong availment of cenvat credit during the relevant period. He submits that the opening balance of the credit availed in the month of April 2010 was shown as Rs.26,83,37,826/- whereas the closing balance in March 2010 was Rs.4,55,32,173/-. Consequently, a demand notice was issued to the appellant for recovery of cenvat credit of Rs.22.28 crores. It is his contention that, necessary evidence, including C.A. certificates were produced by them indicating the error in maintaining the accounts. In the earlier round of litigation, after being satisfied that there is some mistake in maintaining the books of accounts, this Tribunal remanded the matter to the adjudicating

authority for verification of the cenvat records for the relevant period. He has vehemently argued that pursuant to the direction of the Tribunal, the learned adjudicating authority, through letter dated 17.10.2016, directed the appellant to produce all the documents on or before 2.11.2016. The same were carried with them for scrutiny on 02.11.2016, however, the office of the learned Commissioner informed that since the Commissioner was busy in some other work, hence personal hearing could not materialize. Consequently, they attended the office next day for the said purpose. However, to their surprise, the order was passed on 3.11.2016. In support of the fact that they have carried all the records for scrutiny by the department and kept on the direction of the department these records on the 15th floor of the building, the learned Advocate placed photographs indicating storage of the records contained in cartons. It is his submission that in absence of scrutiny of these records, any order passed by the adjudicating authority would be contrary to the remand order of the Tribunal, hence, cannot be sustained. He has submitted that these documents are still in their possession and can be placed for scrutiny.

3. To ascertain the correctness of the submissions, the Bench during the course of hearing on 10.12.2018,

directed the learned AR to obtain a report from the respective Commissionerate.

4. The learned AR for the Revenue placed a letter dated 20.12.2018 of the learned Commissioner. No categorical information has been submitted on the issue of storage of the records on the 15th floor of the office premises for scrutiny by the department.

5. We have carefully considered the submissions of both sides. The short issue involved in the present appeal is verification of the records to ascertain the correctness of the credit availed by the appellant during the relevant period where, admittedly, the closing balance and the opening balance in March 2010 and April 2010 were said to be incorrect vis-à-vis the information submitted in their respective ST-3 returns. In the first round, this Tribunal remanded the matter to the adjudicating authority for verification of the records to ascertain the quantum of credit availed by the appellant, which estimated to be roughly spread over 44,000 entries during the relevant period. It is the case of the appellant that as directed by the learned Commissioner through his letter dated 17.10.2016, all the records running into several volumes were carried by them on 2.11.2016 for scrutiny, but the order was passed without scrutinizing the same on the next day.

On going through the photographs and other evidences, *prima facie* we are satisfied that the appellant had carried the documents for scrutiny, but the department failed to carry out the scrutiny and the order was passed. In these circumstances, we find merit in the contention of the learned Advocate for the appellant. Consequently, we set aside the order and remand the matter to the adjudicating authority to scrutinize the documents either on sample basis or following any other method to ascertain the correctness of the credit availed by the appellant. The appellant is directed to place all the records within six weeks from the date of communication of the order before the learned adjudicating authority for scrutiny. Needless to mention, a reasonable opportunity of hearing be allowed to the appellant.

6. Appeal is allowed by way of remand.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)