M/s Bharat Sanchar Nigam Limited Vs CCE, Jaipur

Service Tax Appeal No. 282 Of 2009

Court: Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Date of Decision: July 10, 2014

Acts Referred:
Cenvat Credit Rules, 2004 â€" Rule 9#Finance Act, 1994 â€" Section 73

Hon'ble Judges: G. Raghuram, J; R. K. Singh, Technical Member

Bench: Division Bench

Advocate: Chandan Kumar, Govind Dixit

Final Decision: Allowed

Judgement

1. The appellants herein filed this appeal against Order-in-Appeal No. 1(DK/ST/JPR-I/2009 dated 13.01.2009 in terms of which the Commissioner

(Appeals) had upheld the adjustment of Rs.11,18,182/- out of the total refund of Rs.11,79,720/- sanctioned vide Order-in-original No. 44/R/2007

passed by Assistant Commissioner, Central Excise, Alwar which adjusted the impugned amount of Rs.11,18,182/- and refunded only the net

(remaining) amount of Rs. 61,538/- in form of cenvat credit. Briefly stated, the facts of the case are as under:

The appellants were given a show cause notice dated 17.01.2007 asking them to show cause as to why their refund claim of Rs.11,79,720/- should not

be rejected. The appellants submitted their reply dated 25.05.2007. The Assistant Commissioner issued a corrigendum (dated 17.07.2007) to the

earlier show cause notice stating that as the appellants had taken credit to the tune of Rs.11,18,182/- on the strength of the invoices for capital goods

issued by their Head Office, the same was not admissible as their Head Office was not registered as a registered dealer and therefore asking why

their refund should not be rejected to the extent of Rs.11,18,182/-. The appellants contended that the refund sought was of the excess amount paid by

them which should be sanctioned and that the amount of cenvat credit on capital goods (Rs.11,18,182/-) was rightly taken on the strength of the

documents issued by their Head Office in respect of the capital goods actually used by them for providing the output service and they and their Head

Office are not separate entities.

2. We have considered the facts of the case and the appellants submissions. It is seen that vide Order-in-original No. 44/R/2007, the Assistant

Commissioner sanctioned the entire amount of refund sought by them. In other words, the Assistant Commissioner sanctioned the refund of

Rs.11,79,720/-. Having sanctioned the entire amount as refund, the Assistant Commissioner, recording that Rs.11,18,182/- availed and utilised by the

appellants was not found admissible on the ground of its availment on the strength of improper documents under Rule 9 of the Cenvat Credit Rules,

went ahead and deducted Rs.11,18,182/- from the sanctioned amount. In this regard, it is pertinent to state that while confirmed demand can be

adjusted from the amount of refund, there is no provision to adjust unconfirmed demand from the amount of refund. It is seen that there has been no

show cause notice given to the appellants for showing cause as to why the cenvat credit amount of Rs.11,18,182/- (adjusted from the amount of

refund sanctioned) was inadmissible to them and how the same was recoverable under what provision of law and how it was not hit by time bar

inspite of having been taken in the year 2005-06. Even if the corrigendum issued on 17.07.2007 is attempted to be treated as a show cause notice, the

said corrigendum falls fatally short of the requirement of a notice under Section 73 of the Finance Act, 1994 inasmuch as the said corrigendum does

not even mention Section 73 ibid anywhere at all and it also does not contain any grounds to allege as to how the recovery, even if the said credit was

held to be inadmissible, was not hit by time bar. Indeed the said corrigendum nowhere requires the appellants to show cause as to why the said

amount should not be held inadmissible and why / how the same is recoverable without being hit by time bar. It merely stated that the said amount

appeared to be not admissible to them and then straightaway called upon the appellants to show cause as to why the refund claim should not be

rejected to the extent of Rs.11,18,182/-.

3. While it is arguable that the amount of Rs.11,18,182/- taken as cenvat credit on the strength of the document received by the Head Office of the

appellants is clearly admissible as has been held in several cases of the appellants themselves, in the instant case, this point is beside the issue.

4. As has been stated earlier vide the said order-in-original the refund claim has not been rejected to the extent of Rs.11,18,182/-. As a matter of fact,

it has been sanctioned 100% inasmuch as the refund sanctioned is Rs.11,79,720/-. Having sanctioned the full amount, there was no legal authority to

adjust the amount of Rs.11,18,182/- as the same cannot be held to be a confirmed demand for the reasons recorded earlier. The learned AR also

appreciated as much.

5. In view of the above discussion, we allow the appellantsÃ¢â‚¬â„¢ appeal, set aside the impugned order and order the refund of the remaining amount of

Rs.11,18,182/- alongwith applicable interest.

(Operative part of the order was already pronounced in the Court).