GIB/BL/INDIA TELEPHONE/13.10.2017/OTHERS-9

Others Category : Others

State : Bangalore

Order No.: GIB/BL/INDIA TELEPHONE/13.10.2017/OTHERS-9

Name of Entry :
M/s. India Telephone Industries

Date : 13-10-2017

Breif Issue :

Custom, Excise & Service Tax Tribunal

M/S. India Telephone Industries ... vs Commissioner Of Central Excise ... on 13 October, 2017

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

BANGALORE

Appeal(s) Involved:

E/20707/2016-SM

[Arising out of Order-in-Original No.CAL-EXCUS-000-COM-031-15-16 dt. 30/11/2015 passed by Commissioner M/s. India Telephone Industries Ltd.

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax, Calicut

Respondent(s)

Appearance:

Shri B.V. Kumar, Advocate For the Appellant Dr. J. Harish, Dy. Commissioner(AR) For the

Respondent Date of Hearing: 18/07/2017 Date of Decision: .....

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. / 2017

Per : S.S GARG

The present appeal is directed against the impugned order dt. 30-11-2015 / 03-12-2015 passed by the CCE&C, Calicut whereby the Commissioner has confirmed the demand of Rs.76,77,017/- and appropriated the said amount. Further the Commissioner has demanded an amount of Rs.3,86,490/- being the interest payable under Rule 14 of CENVAT Credit Rules, 2003 read with Section 78 of the Finance Act for wrongly availing the CENVAT credit.

2. Briefly the facts of the case as made out in the show-cause notice is that while auditing the records

of the appellant, the internal audit party noticed that the appellant has availed CENVAT credit amounting to Rs.1,23,96,927/- based on the service tax invoices received from input service providers. However the value of the service and service tax paid or payable as indicated in the invoice / bill was not made within three months from the date of invoice/bill. Further the service tax availed on the basis of the said invoices of the service provider was not reversed as required under Rule 4(7) of the CENVAT Credit Rules, 2004. Further allegation against the appellant is that the appellant has taken the service tax credit of Rs.3,817/- on rent-a-cab scheme and health services which were not input services during the relevant time. Further the appellant accepted the audit objection and reversed the entire ineligible credit of Rs.1,24,00,744/- in their CENVAT credit account of August 2012 and intimated the Department vide letter dt. 22/09/2012. But the appellant had not paid any interest on the ineligible CENVAT credit availed by them. It was also found on verification of ER return for the month of March, 2012 and April, 2012 and the statement of CENVAT credit availment and utilisation, it was found that ITI had availed an ineligible input service tax credit of Rs.1,21,57,322/-, out of which an amount of Rs.74,33,595/- was utilised for payment of service tax on certain services during the period March 2012 and July, 2012. The appellant filed the reply to the show-cause notice and after following the due process of law, the learned Commissioner vide the impugned order dt. 30/11/2015 confirmed the demand and appropriated the amount reversed and the Commissioner has also demanded interest and also imposed penalty which is under challenge by the appellant.

3. Heard both the parties and perused records.

4. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the provisions of Rule 4(7) of CCR. The impugned order is also contrary to the binding judicial precedent on the same issue. He further submitted that the CENVAT credit amounting to Rs.1,29,96,927/- availed by the appellant during the period February 2012 to April 2012 and Rs.3,817/- availed during the period September 2011 and January 2012 was reversed by the appellant in August 2012 i.e. much before the issuance of the show-cause notice dt. 28/08/2013 which is an admitted fact in the show-cause notice and the impugned order dt. 30/11/2015. He further submitted that Rule 4(7) of the CCR provides for reversal of CENVAT credit availed by the assessee on the basis of invoice, bill or challan given by the service provider, when the payments are not made by the assessee to the input service providers. Further Rule 4(7) also permits the assessee to take recredit of the CENVAT credit so reversed as and when the payments are made to the input service provider. He also submits that Rule 4(7) does not lay down the time limit before which ineligible CENVAT credit is required to be reversed. On the contrary, the said rule provides for retaking of the CENVAT credit which has been reversed by the assessee as and when the payments are made. He also submitted that in view of the fact that the appellant has reversed the CENVAT credit in August 2012 itself before the issue of show-cause notice, they are not liable to pay interest or penalty under Rule 15 of CCR. He also submitted that the demand of interest on the alleged ineligible CENVAT credit is not sustainable in law, particularly when the appellants were having sufficient credit balance in their CENVAT credit account. In support of his submissions, he relied upon the following decisions:-

i. CCE, Allahabad Vs. Blrampur Chini Mills Ltd. [2014(300) ELT 449 (Tr Del.)]

ii. CCE, Raipur Vs.Sharda Energy & Minerals Ltd. [2013(291) ELT 404 (Tri. Del.)]

iii. CCE, Chandigarh Vs. Rama

Industries [2013(291) ELT 372 (Tri. Del.)]

iv. CCE, Ghaziabad Vs. Ashoka Metal Decor (P) Ltd.

[2010(256) ELT 524 (All.)]

He also submitted that the appellants have been regularly filing their monthly returns in ER2 and ST3 and there was no suppression of facts on their part with an intention to evade payment of duty. Therefore penalty under Rule 15(3) is not sustainable in law.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant has violated the provisions of Rule 4(7) of CCR and has taken ineligible CENVAT credit and when it was pointed out by the audit, the appellant reversed the same before the issue of show-cause notice. He further submitted that the verification of ER2

return for the month of March 2012 and April 2012 and the statement of CENVAT credit account, it was found that the appellant had taken the ineligible input service credit of Rs.1,21,57,322/- out of which an amount of Rs.74,33,595/- was utilised for payment of service tax on certain services during the period March 2012 and July 2012. He also submitted that since the appellant has utilised the ineligible CENVAT credit, therefore, he is liable to pay the interest and penalty and the decisions relied upon by the appellant cited supra are not applicable in the facts and circumstances of the present case.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants have taken the ineligible CENVAT credit in violation of the provisions of Rule 4(7) of the CCR, 2004 in respect of the input service for which they have not made payment within three months from the date of receipt of invoices. I also find that this aspect of availment of CENVAT credit was detected during the audit conducted by the Revenue and thereafter the appellant reversed the entire ineligible credit in their CENVAT credit account in August 2012 and intimated the Department on 22/09/2012. Further I find that the appellants have utilised an amount of Rs.74,33,595/- for payment of service tax on certain services during the period March 2012 to July 2012. For which they are liable to pay interest as demanded in the impugned order.

Further I also find that the decisions cited supra are not applicable in the facts and circumstances of this case because in the present case a part of the ineligible CENVAT credit was used for payment of service tax during the relevant period. Further as for as imposition of penalty under Rule 15(3) of CCR is concerned I am of the considered view that appellants are not liable to penalty because they have been regularly filing their monthly returns in Form ER2 and ST3 and there is no suppression on their part nor Revenue has brought any evidence on record to show that they had any intention to evade payment of tax.

7. In view of my discussion above, I partly allow the appeal of the appellant and uphold the demand of interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 and drop the penalty imposed under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act.

(Order pronounced on .....) S.S GARG JUDICIAL MEMBER Raja...