CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.50714 Of 2015

[Arising out of OIO No.CHD-CEX-001-COM-88-2014 dated 05.12.2014 passed by the Commissioner of Central Excise & Service Tax, Chandigarh-I]

M/s Bharat Sanchar Nigam Ltd. **: Appellant (s)**
Hari Niwas Khalini, Shimla,
Himachal Pradesh-171002

Vs

The Commissioner of Central Excise
And Service Tax, Chandigarh-I **: Respondent (s)**
Plot No. 19, Central Revenue Building,
Sector-17C, Chandigarh-160017

APPEARANCE:
Ms. Krati Singh and Shri Aman Singh, Advocates for the Appellant
Shri Anurag Kumar and Shri Yashpal Singh, Authorised Representatives for the Respondent

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60015/2024

Date of Hearing: 09.01.2024

Date of Decision: 12.01.2024

Per: P. ANJANI KUMAR

The appellant, M/s Bharat Sanchar Nigam Ltd. (BSNL), is a Public Sector Undertaking engaged in providing Telecommunication and Cellular Mobile Network Services; they have received certain input services and availed credit of the same as distributed, by their Head Office, Shimla Circle, as ISD; Department disputed availment of such credit on the ground that the document on which credit has been taken is not a proper document under Rule 9(g) of CENVAT Credit
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Rules read with Rule 4A(2) of Service Tax Rules, 1994 and that the ISD themselves did not have proper proof of payment to the service provider; accordingly, a show-cause notice dated 12.08.2013, invoking extended period, was issued to the appellants seeking demand of Rs.1,32,21,806/- under Rule 14 of CENVAT Credit Rules, 2004; the demand was confirmed along with equal penalty vide impugned order dated 05.12.2014.

2. Ms. Krati Singh, assisted by Shri Aman Singh, learned Counsel for the appellants, submits that the tender for the works was floated by BSNL for setting up and managing infrastructure sites for provision of Mobile and Telecom Services; the above services were received by BSNL and was distributed to the appellant; neither the impugned order not the show-cause notice dispute the admissibility of credit in question; credit is sought to be denied only on the basis of non-conformity of documents; the fact that the said service is an input service to the appellant and that the same has been availed is not disputed. She submits that CENVAT credit is a substantive benefit and as such, the same cannot be denied on the basis of procedural defects of minor nature; the credit distributed by M/s BSNL was along with a proper statement containing the details like supplier’s invoice; name of the service provider; contract details; taxable service and service tax amount paid. She submits that Department vide Circular dated 16.02.2018 clarified that credit cannot be denied for procedural irregularities. She relies upon the following cases:

- Jai Balaji Industries Ltd. – 2022 (58) GSTL 361 (Tri. Kolkata)
- United Phosphorus Ltd. – 2022 (11) TMI 747- CESTAT AHMEDABAD
- Mafatlal Industries Ltd. – 2020 (43) GSTL 562 (Tri. Ahmd.)
- Pricol Ltd. – 2023 (3) TMI 230- CESTAT CHENNAI
- CCE VS Dashion Ltd. – 2016 (41) STR 884 (Guj.)
- 3M Electro & Communication India Pvt. Ltd. – 2023 (6) TMI 1104-CESTAT CHENNAI
- Terex India Pvt. Ltd. – 2018 (3) TMI 603- CESTAT CHENNAI
- Gabriel India Ltd. – 2016 (12) TMI 155- CESTAT NEW DELHI
- Hical Technologies Pvt. Ltd. – 2020 (3) TMI 1304- CESTAT BANGALORE

3. Learned Counsel for the appellants submits that eligibility of CENVAT credit and the requirement provide input service invoices should be questioned at the end of the ISD and not at the end of the appellant; Department has not initiated any proceedings against the ISD Registration for the same; therefore, denial of credit to the appellant is not legally tenable. She relies on CST Vs Godfrey Philips India Ltd. – 2009 (239) ELT 323 (Tri. Ahmd.) and United Phosphorous Ltd. – 2013 (30) STR 509 (Tri. Ahmd.).

4. Learned Counsel further submits that for the purpose of invocation of extended period, it is required to establish fraud, collusion, wilful mis-statement or suppression of fact or contravention of any provisions of the Act or Rules with an intent to evade the payment of tax; Adjudicating Authority has failed to establish any of these ingredients; Department has raised the issue on the basis of an audit objection, audit was conducted on 26.04.2010, 27.04.2010 and

25.08.2010; Department sought certain clarifications vide letter dated 01.10.2010 and the appellants have submitted the same vide letter dated 22.12.2010; thereafter, for three years, Department did not take any action and the show-cause notice was issued on 12.08.2013 beyond the statutory period of limitation; further, the appellant being a Public Sector Undertaking, fraud, collusion or any mala fide action with intent to evade payment of duty cannot be alleged. She relies on the following cases:

- Bharat Sanchar Nigam Ltd. – 2018-TIOL-3238-CESTAT-BANG.
- Bharat Sanchar Nigam Ltd.- 2018-TIOL-732-CESTAT-AHM.
- Oriental Insurance Company Ltd. – LTU 2023 (6) MI 646- CESTAT New Delhi.
- Bharat Electronics Ltd.- 2023 (9) TMI 870-CESTAT CHENNAI.
- Corporation Bank- 2018 (9) TMI 1725-CESTAT BANGALORE.
- Centre For Management Development 2018 (8) TMI 1687- CESTAT BANGALORE.

5. Shri Anurag Kumar, assisted by Shri Yashpal Singh, learned Authorized Representatives for the Department, takes us through the provisions of Rule 4A(1) and Rule 4A(2) of Service Tax Rules, 1994; Notification No.27/2005-ST dated 07.06.2005; CENVAT Credit Rules, 2004 and particularly, Rule 9 ibid and Circular No.97/8/2007-ST dated 23.08.2007 and submits that neither the appellant nor the ISD Registrant have complied with the provisions of the Rules and therefore, CENVAT credit cannot be allowed on the plea that it is a mere procedural lapse; he submits that the case of M/s Mafatlal

Industries (supra)relied upon by the appellant is not applicable as the facts of the case are different.

6. Heard both sides and perused the records of the case. The brief issue involved in the case is that whether the appellants are eligible to avail credit when the document on which the credit is availed is alleged to be non-conforming to the provisions of Rule 9(1)(g) of CENVAT Credit Rules, 2004 and Rule 4A of Service Tax Rules, 1994 and whether in the facts and circumstances of the case, extended period can be invoked. We find that leaned Commissioner finds that the dispute is related to the nature of the documents issued by the input service distributor; the documents submitted was monthly summary of credit transferred by the ISD and these sample documents bear manually written numbers; the documents clearly mentions that the said bill mentions advance payments and payments for measured works; the document cannot be considered to be an invoice or bill or challan under Rule 9(1)(g) of CENVAT Credit Rules, 2004; moreover, it does not contain registration number, address, date of issue, serial number etc. as required under Rule 4A(2) of Service Tax Rules, 1994; it does not contain any information of the credit distributed. Learned Commissioner further finds that decision in the case of M/s BSNL, Salem relied upon by the appellants has been appealed against before Hon'ble High Court of Chennai.

7. We find that learned Commissioner has mainly relied upon Rule 9(1)(g) of CENVAT Credit Rules, 2004 and Rule 4A(2) of Service Tax

Rules, 1994 and comes to the conclusion that the document provided by the ISD or the appellant does not contain all the details. As contended by the learned Counsel for the appellants, the availment of CENVAT credit is not under dispute; it is not the case of the Department that the appellant has not availed the service or that the ISD has not paid for the same or that the ISD has wrongly distributed the credit or that the ISD have distributed the credit in excess of the available credit. We find that the Tribunal, in the case of Mafatlal Industries Ltd. (supra), find that:

> "**12.** The demand of Rs. 41,94,123/- has been confirmed on the basis that Cenvat credit could not have been transferred by the appellant's various branches to Nadiad unit under Centralised registration without issuance of proper documents by each unit. In this regard we find that the appellant undisputedly made necessary recording in the statutory books of transferee's branch. There is no document prescribed for such transfers. There is no case of the department that the transferor branches have transferred excess credit or wrong credit. It is also not a case of the department that the Cenvat credit transferred is not out of the credit availed by the branches. Therefore, only on the ground that proper documents under centralized registration was not issued for transfer of credit cannot be denied. This issue has been considered by this Tribunal in the case of *Central Bank of India* (supra) wherein this Tribunal has considered identical issue as under :-
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> "6. After hearing both the sides at length and going through the material available on record, we are of the view that appellant is a public sector undertaking Bank, no individual interest is involved. The main ground on which Cenvat credit was denied is lack of proper document for transferring credit lying at various branches to the zonal office upon approval of centralized registration. The fact remains that the documents were available in the books of account and as mentioned no individual interest is involved. Further, we find there is no statutory requirement of specified

> documents for transferring credit available with the multiple registrations to centralized registration. Hence, when there is no dispute regarding the credit originally availed by various branches, transfer of such credit cannot be denied. We are of the view that there is no distribution of credit in the present situation.
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> 7. Considering the above factual position, we find that impugned order is not sustainable. Same is set aside.
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> 8. In the result, appeal filed by the appellant is allowed."
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> In view of the above discussions and observations made by us, there is no sufficient reason to deny Cenvat credit of Rs. 41,94,123/-, hence demand of the said amount is set aside."

8. We further find that the Tribunal in the case of Dashion Ltd. (supra) finds as follows:

> "7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee."

9. We find that the findings of the Tribunal as above is categorical to the effect that credit cannot be denied on the basis that the distribution was not on the basis of proper documents. Moreover, as submitted by the learned Counsel for the appellants, the admissibility of CENVAT credit has not been questioned and no proceedings have been initiated against the ISD questioning the availment of credit or excess distribution etc. We find that Tribunal in the case of United Phosphorous (supra) held that:

> "5. On careful consideration of the submissions made by both sides, we find that the issue involved in this case is regarding denial of Cenvat credit on the invoices for transfer of Cenvat credit to the appellant on the basis of debit note which did not contain any detail as required under the statute. We have perused the debit notes which are annexed at pages 22, 23, 24 & 25 of the appeal memo. The said debit notes have been issued by M/s. SSKI Corporate Finance Pvt. Ltd. We find that the said M/s. SSKI has specifically indicated the rate of service tax paid by them, and service tax Registration No. in their invoice. It is also seen that M/s. SSKI has issued the invoices addressed to Head Office at Bombay of appellant. There is no dispute as to services rendered by SSKI to the appellant at Head Office.
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> Appellant's head office has transferred the Cenvat credit of service tax paid by M/s. SSKI, as an input service distributor is also not disputed.
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> 6. In our considered view, the head office of the appellant, being a registered ISD is eligible to distribute service tax credit to any of their units/factory. On a specific query from the Bench, learned departmental representative informed that there was no proposal or proposition to issue show-cause notice to the input service distributor for wrong availment of Cenvat credit.

> 7. We find that the view or conclusion arrived at by the lower authority in denying the Cenvat credit is incorrect as there is no dispute of receipt of services. Our views also fortified by the decision of this Bench (supra) [2009 (239) E.L.T. 323 (Tri.-Ahmd.)] wherein this Bench had recorded the following findings :
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> "When we look at the functions of the input service distributor and the documents to be issued by him for passing on the credit, it becomes quite clear that the document issued by him for passing on the credit does not contain the nature of service provided and the details of services. It contains the service provider's details, distributor's details and the amount. Obviously the eligibility or otherwise of the service tax credit has to be examined at the end of input service distributor only. This is further supported by the fact that both Central Excise assessees and Service Tax assessees are under the regime of self-assessment and therefore it is the assessee himself who has to specify that the credit availed by him is admissible. Therefore the input service distributor cannot say that he is not required to prove the eligibility or otherwise of the service tax credit once at the receiver's end which could be a branch or a factory of the distributor, no details would be available regarding the nature of service. Therefore the preliminary objection raised by the ld. Advocate has to be rejected and it has to be held that it is the responsibility of the jurisdictional officer with whom input service distributor has registered to decide the dispute regarding eligibility or otherwise of the service tax credit that the input service distributor has taken and proposes to pass on to others."

10. In view of the above, we find that when the availment of services and admissibility of credit are not questioned at the end of the appellant or the ISD, CENVAT credit cannot be denied; substantive benefit of CENVAT credit cannot be denied just because there were some procedural infractions. Learned Commissioner seeks to confirm the demand on the basis of the finding that the appellants have not provided further requisite information. However, ongoing through the

records of the case, we find that audit was conducted on 26.04.2010, 27.04.2010 and 25.08.2010; Department sought certain clarifications vide letter dated 01.10.2010 and the appellants have submitted the same vide letter dated 22.12.2010.Thereafter, the Department did not conduct any enquiries for three long years and have issued a show-cause notice dated 12.08.2013. The appellants having supplied the information sought by the Department vide letter dated 22.12.2010, cannot be alleged to have not supplied the requisite information. It was open to the Department to collect whatever information that was required to satisfy themselves before the issuance of show-cause notice. The Department requires to prove the inadmissibility of credit or any lapses on the part of the appellant in a positive proactive manner rather than on the averment that the appellants failed to supply the requisite information. However, as the admissibility of CENVAT credit not being in dispute, we are of the considered opinion that the same cannot be denied for procedural inadequacies, more so, when Department neither disputed the documents submitted by the appellants nor conducted any further verification.

11. Learned Counsel for the appellants submits that the issue is barred by limitation. We find that audit was conducted on 26.04.2010, 27.04.2010 and 25.08.2010; Department sought certain clarifications vide letter dated 01.10.2010 and the appellants have submitted the same vide letter dated 22.12.2010; thereafter, for three years, Department did not take any action and the show-cause notice was

issued on 12.08.2013; the appellants have been regularly submitting the ST-3 Returns. Moreover, keeping in view the fact that the appellants are a PSU, we find that no mala fide intention can be attributed to the appellant. We find that different Benches of the Tribunal have been continuously holding the same. We find that Principal Bench at New Delhi held in the case of G.M. Telecom, BSNL - 2006 (3) S.T.R. 122 (Tri. - Del.)held as follows:

> **5.** The appellant is a Department of Central Government. It is bound to make payment including crediting of the amount received from the subscribers towards the telephone charges and service tax in accordance with the directives given by the Chief Controller of Accounts. It is the case of the appellant that they were strictly following the procedure prescribed by DOT Headquarters in consultation with the Principal Chief Controller of Accounts and the Central Board of Excise & Customs. This procedure was toward till March, 1999. Thereafter the General Manager is directly crediting the service tax to the book account of the Central Government under the Head 0044 in view of a circular issued in the year 1998. Thus the delay caused by the statement being sent to DOT Headquarters is avoided. In the peculiar facts and circumstances of this case where the appellant is a Central Government Department and that it had been strictly following the procedure approved by Principal Chief Controller of Accounts and which procedure has resulted in the delay and the fact that the amount received from the subscribers were deposited on a day to day basis in the Post Office to the account of the Central Government, we find that the appellant cannot be burdened with the liability to pay interest. We make it clear that this view is being taken only in the facts of this case where the delay is caused in depositing the service tax in the specific account of the Central Government by none other than a department of the Central Government and also because of the fact that the amount was deposited in the account of the Central Government on a day-to-day basis. We, therefore, set aside the order impugned and allow the appeal.

12. In view of the above, the appeal is allowed both on merits and limitation.

(Pronounced on 12/01/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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