IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 491 of 2011

(Arising out of Order-in-Original No. 06/2011 (ST) dated 31.05.2011 passed by the Commissioner of Central Excise and Service Tax, No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Cable Vision **: Appellant**
Santham Towers, T.S. No. 4218,
South Fourth Street,
Pudukkottai – 622 001

VERSUS

The Commissioner of Central Excise and Service Tax : Respondent
No.1, Williams Road, Cantonment,
Tiruchirappalli – 620 001

APPEARANCE:

Shri R. Parthasarathy, Learned Advocate for the Appellant

Shri R. Rajaraman, Learned Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40087 / 2023

DATE OF HEARING: 21.02.2023

DATE OF DECISION: 27.02.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee against the impugned Order-in-Original No. 06/2011 (ST) dated 31.05.2011 passed by the Commissioner of Central Excise and Service Tax, Tiruchirappalli.

2. Heard Shri R. Parthasarathy, Learned Consultant for the appellant and Shri R. Rajaraman, Learned Assistant Commissioner for the Revenue. We have gone through the documents placed on record as also the various decisions / orders relied upon during the course of arguments.

3. After hearing both sides, we find that the issues to be decided are:-

(1) Whether the Adjudicating Authority was correct in denying the CENVAT Credit for the reason that some of the invoices were without signature and that in certain cases, conditions under Rule 4A of the Service Tax Rules, 1994 were not fulfilled?

(2) Whether the demand of Service Tax was correct on the link advance received? and

(3) Whether the Adjudicating Authority was correct in levying penalty under Section 78 of the Finance Act 1994?

4. A Show Cause Notice dated 20.10.2010 was issued for the period from 01.04.2005 to 30.06.2010 *inter alia* alleging that the appellant was liable to pay Service Tax as per Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, thereby proposing to demand the same by invoking the larger period of limitation, apart from applicable interest and penalty. From the records, it appears that the appellant filed its reply and participated in the adjudication proceedings as well.

5. The Adjudicating Authority, after hearing the appellant and after considering its explanation, has vide impugned order confirmed a partial demand thereby allowing a partial CENVAT Credit also, but however, has proceeded to confirm the demand in respect of most of the other part. It is against this order that the present appeal has been filed before this forum.

6.1 It is the case of the appellant that it had claimed input Service Tax credit to the extent of Rs.34,31,074/-, but however, the Learned Commissioner has arbitrarily restricted the same to Rs.4,56,032/- and it is contended by the Learned Consultant that the findings of the lower authority that certain invoices were not in accordance with the requirement of Rule 4A *ibid.* are not sustainable since

the defects pointed out were mere clerical mistakes which were curable.

6.2 Further, it was contended that insofar as link advance is concerned, the same represented a refundable deposit received towards cable services and hence, the lower authority had erred in charging Service Tax on the above.

7. *Per contra*, the Learned Assistant Commissioner for the Revenue has relied on the findings of the lower authority and would also contend that though the appellant had made several claims, such claims were never substantiated by producing supporting documents and therefore, the Adjudicating Authority was correct in allowing the partial CENVAT Credit in support of which documents were produced.

8. We have seen from the records as well as the contentions of the Learned Consultant for the appellant that the appellant had claimed CENVAT Credit to the extent of Rs.34,31,074/-, but however, the lower authority has allowed input Service Tax credit to the extent of Rs.4,56,032/-.

9.1 It is observed that certain invoices were computer generated, which did not have the signature. We find that various Benches of the CESTAT have taken a consistent view that in respect of computer generated invoices, signature was not required and consequently, have directed the authorities not to deny the input Service Tax credit, in the following cases:-

(i) *M/s. Mammon Concast Pvt. Ltd. v. Commr. of CGST, Cus. & C.Ex., Alwar [2021 (52) G.S.T.L. 613 (Tri. – Del.)];*

(ii) *M/s. Poornam Info Vision v. Commissioner of C.T. & C.Ex., Cochin [2019 (365) E.L.T 592 (Tri. – Bang.)]*

9.2 Following the ratio of the above orders, we are of the view that the input Service Tax credit should not be

denied merely because the invoices are computer generated, which did not have signatures. Consequently, to this extent, the impugned order is set aside and this ground of the appeal stands allowed.

9.3.1 The next grievance of the appellant is the denial of input Service Tax credit on the allegations of non-fulfilment of the conditions in Rule 4A of the Service Tax Rules, 1994. In this regard, the appellant has placed reliance on the orders of the co-ordinate Delhi Bench of the CESTAT in the cases of:-

(i) *M/s. Aditya Cement v. Commissioner of Central Excise, Jaipur-II [2018 (10) G.S.T.L. 36 (Tri. – Del.)];*

(ii) *M/s. Praveen Jain & Co. Pvt. Ltd. v. Commissioner of Service Tax, Delhi [2011 (265) E.L.T. 239 (Tri. – Del.)]*

He has also contended that the defects pointed out by the lower authority were in the nature of clerical mistakes, which were curable.

9.3.2 The Adjudicating Authority has, in the impugned Order-in-Original, clearly brought out on record that some of the invoices had different names altogether, which did not even contain the name of the appellant and when the same was brought to the notice of the appellant, the appellant did not explain; and that in respect of certain other invoices, the same were issued on 03.04.2011 for the services provided during September 2009 to June 2010. In respect of some of the invoices, the Adjudicating Authority has observed that the same were computer generated, which did not contain any signature/s and that some of the invoices were photocopies.

9.3.3 We find that though an assessee has a right to claim input Service Tax credit, but however, the Revenue Authorities also have a duty to verify such claims of the assessee and hence, it is the duty of such assessees to place on record all supporting documents in support of their claims. Further, as noted by us in the above paragraphs,

the CESTAT Benches have consistently taken the view that such input Service Tax credit shall not be denied just because the supporting invoices were computer generated and the same proposition would equally apply in respect of photocopy of invoices. Hence, we are of the view that the input Service Tax credit cannot be denied just because computer generated invoices or photocopies of invoices were produced and consequently, we direct the authority to allow the appellant's claim of input Service Tax credit wherever computer generated invoices and photocopies of the same were produced in support.

9.3.4 Insofar as the finding as to the mismatch of name, date, etc., we do not find any infirmity in denying the input Service Tax credit since, clearly, even before us the appellant has not bothered to produce appropriate invoices. Hence, no interference is called for and consequently, this ground of the appeal is partly allowed.

10. The next issue is relating to link advance, which the appellant has claimed as a refundable deposit, but however, even before this forum, they have not made any efforts to place on record any supporting documents like, agreement, contract, etc., to buttress their arguments. Hence, we do not feel it proper to interfere with the findings of the lower authority and consequently, this ground of the appeal stands dismissed.

11. The last issue relates to the penalty levied under Section 78 of the Finance Act, 1994. We find that the appellant had entertained a *bona fide* doubt as to the Service Tax liability and there is also no finding that the appellant had intentionally evaded the payment of Service Tax. Moreover, from the facts which have been brought on record, there is no scope for any fraud or intent to evade the payment of Service Tax. Hence, we deem it proper to delete the penalty levied under Section 78 *ibid.* by invoking the provisions of Section 80 *ibid*. and accordingly, the impugned order to this extent is set aside and this ground of the appeal stands allowed.

12. In the result, the issues involved are decided as under:-

(1) Issue No. 1: In respect of denial of credit for the reason that some of the invoices were photocopies and computer generated and without signature, the same is decided in favour of the assessee and to this extent, the impugned order is set aside and this ground of the appeal stands allowed.

In respect of denial of credit on the ground of non-fulfilment of conditions of Rule 4A *ibid.,* however, we do not interfere with the impugned order insofar as the finding as to mismatch of name, date, etc., is concerned, while only allowing the credit in cases where computer generated invoices or photocopies of the same were produced, thereby partly allowing this ground of the appeal.

(2) Issue No. 2: In respect of the demand of Service Tax on the link advance received, we do not interfere with the impugned order and accordingly, this ground of the appeal stands dismissed.

(3) Issue No. 3: In respect of the penalty levied under Section 78 *ibid.,* we deem it proper to delete the same and accordingly, the impugned order to this extent is set aside and this ground of the appeal is allowed.

13. The appeal is disposed of on the above terms.

(Order pronounced in the open court on **27.02.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sdd