idea Mobile Communications Ltd. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/45741

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-2007

Reported in : (2007)8STR551

Judge : R Abichandani, S T T.V.

Appellant : idea Mobile Communications Ltd.

Respondent : Cce

Judgement :

1. This stay application filed along with the appeal challenges the order of the Commissioner of Customs and Central Excise dated 31.1.2007. In the impugned order, the Commissioner has confirmed demand of Rs. 1,74,64,509/- wrongly taken/availed/utilized Cenvat credit on the inputs service received on the basis of documents issued prior to 20.9.2004 or without having date of issue. He has also confirmed the demand of interest oh this amount besides imposing a penalty of Rs. 10,000/- on the appellant. According to the ld. Counsel for the appellants, the only ground for rejecting their Cenvat entitlement is based on the misunderstanding that the input services were not the same category as that of the output services rendered by them. This ratio of the ld. Commissioner was vociferously challenged more particularly in view of the amendment, which has come to occupy in Service Tax Credit Rules 2002, w.e.f. 14.5.03. The grievance is that these changes were not taken into account by the ld. Commissioner while passing his order.

The order is quite silent about these provisions which entitled the appellants to take input service credit even in respect of those input services which are not of the same category as that of output service.

2. The appellants place reliance on the clarification issued by Central Board of Excise & Customs vide their F. No. 345/2/2000-TRU dated 29.8.2000. Para-9 of this circular clarifies that even though the Modvat credit was not taken by the manufacturer, since the Modvat credit had been "earned" by them, they are entitled for the Cenvat credit. It was argued that although the said clarificatory circular belong to an earlier excise era, the ratio should be applicable even now in the current situation as the provisions (Rule 57AC(2)(c) are cast in the same mould. It was also contended that the appellant had filed returns to the department regularly which contained all the details of the credit availed by them.

3. The ld. Authorized representative of the department draws our attention to Rule 11(1) of Cenvat Credit Rules 2004 which reads as under: Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10^th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10^th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

Relying upon the definitions as contained under Rule 2 in respect of "input service" and "output service", he further states that unless the service is "rendered" it cannot be "output service", reiterating the findings of the ld. Commissioner.

4. We have heard both the sides and examined the record. Admittedly, the Commissioner has not taken into account the recent amendments which have brought in a sea-change in Service Tax Credit Rules 2002 with effect from 14.5.2003. It appears that as a result he has come to a conclusion that the input service received by the appellant did not fall under the same category that of output service i.e. (telephone service). At the same time, we do come across certain passages in the impugned order as in para 4.6 particularly which suggest that despite several requests the appellant had ignored to cooperate with the

authorities below when details such as date of issue of invoices/bills/challans to the department etc. were sought for from them. The ld. Commissioner has therefore presumed that such invoices etc. were issued prior to 10.2.04. We have also come across the allegations that such invoices do not even bear dates without which no correlation is possible. As the applicant has not made out a case in his favour for total waiver of duty and penalty demanded under the impugned order, we direct the applicant to deposit a sum of Rs. 50 (Fifty) lakhs within a period of eight weeks from today failing which the appeal shall stand dismissed. On depositing the said amount, remaining amount of duty and penalty confirmed under the impugned order shall stand waived, pending the hearing of the appeal. To come up for reporting compliance on 31.8.2007.