Bsnl Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-18-2008

Judge : P Chacko, K T P.

Appellant : Bsnl

Respondent : Cce

Judgement :

1. Appeal No. S/104/2007 is against denial of CENVAT credit on capital goods amounting to over Rs. 32.00 lakhs for the period 2004 - 05 and 2005 - 06 (up to June 2005). Appeal No. S/134/2007 is against denial of CENVAT credit on capital goods amounting to over Rs. 1.10 crores as also against demand of equal amount of service tax for the period 2005 - 06 and 2006 - 07. This appeal also challenges penalties imposed on the appellants. The appellants are a PSU, who have obtained the requisite clearance from the 'Committee on Disputes' to pursue these appeals.

2. After examining the records and hearing both sides, we note that the appellants viz. M/s. BSNL are rendering taxable services including telephone service to their subscribers all over India. For rendering such services effectively, they have divided the country into what are called "Secondary Switching Areas" (SSAs, for short). Some of these SSAs coming within the State of Tamilnadu are Salem, Coimbatore, Trichy and Kumbakonam. M/s. BSNL have a Central Stores Department [CSD, for short] at Madurai, which caters to the said SSAs by way of purchase and supply of capital goods required for the rendering of the said

services. The challenge in the first appeal is against the CENVAT credit taken by the appellants in SSA Salem on capital goods supplied by CSD, Madurai and covered by copies of manufacturer's invoices. Prior to September 2005, CSD Madurai had no separate registration as "first stage dealer". The lower authorities denied the credit on the said capital goods to the appellants on the ground that the credit had been taken by SSA Salem without there being invoice issued by registered first stage dealer. The learned Counsel has argued that, as the term 'dealer' has not been defined under the CENVAT Credit Rules, it has to be understood in the same way it is understood in common parlance.

Accordingly, it is argued that a dealer should be a person who purchases and sells goods. In this case, CSD Madurai purchases capital goods for BSNL but does not sell them to anybody. The capital goods so purchased are transferred to SSAs maintained by BSNL for being used in rendering the taxable services. Therefore, strictly speaking, it was not open, during the material period, to the appellants to treat the CSD Madurai as a "first stage dealer". It was open to them at SSA Salem to take the CENVAT credit in question on the strength of copies of the manufacturer's invoices whereunder CSD Madurai purchased the goods for M/s. BSNL. In other words, according to the learned Counsel, M/s. BSNL at Madurai purchased the capital goods and at Salem took CENVAT credit thereon under copies of the relevant invoices issued by the manufacturer of the capital goods. In this connection, the learned Counsel has referred to the erstwhile MODVAT scheme wherein the head office of a company, which purchased capital goods/inputs and supplied the same to their manufacturing units situate elsewhere in the country, under invoices (issued by the manufacturer of capital goods/inputs) endorsed for the purpose by the head office in favour of the manufacturing units. In this connection, reliance has been placed on the Tribunal's decision in TISCO Ltd. v. Commissioner 2001 (133) ELT 761 (Tri. - Kol). We have heard the learned SDR also, who reiterates the findings of the Commissioner (Appeals).

3. After considering the submissions, we note that, from September 2005, there is no dispute whatsoever in relation to similar capital goods credit being availed by SSA Salem inasmuch as CSD Madurai stands registered as "first stage dealer" and, in that capacity, issues invoices covering the capital goods supplied to the

SSA. The dispute is for the period prior to September 2005. The CENVAT credit in question has been denied on a technical ground. It is not in dispute that the capital goods were duty-paid, that credit of that duty was taken by the SSA Salem by satisfying the further condition the capital goods was to be used in the rendering of output service. It is settled law that a substantive benefit cannot be denied on a procedural or technical ground where the beneficiary has satisfied the sine qua non for the benefit. The case law cited by the learned Counsel will also support this proposition. We have found prima facie case for the appellants against the denial of CENVAT credit of over Rs. 32.00 lakhs, which is under challenge in Appeal No. S/104/2007. Accordingly, there will be waiver of predeposit and stay of recovery in the said appeal.

4. In the other appeal, the facts are somewhat different. M/s. BSNL have a Deputy General Manager (Projects) at Chennai, Salem and Madurai.

The DGM (Projects) at Salem has jurisdiction over the SSAs at Salem, Trichy, Coimbatore and Kumbakonam. During the period of dispute (2005 - 06 and 2006 - 07), the capital goods purchased by the DGM (Projects), Salem were supplied to Trichy, Coimbatore and Kumbakonam SSAs and CENVAT credit thereon was taken by SSA Salem. These credits totalling to over Rs. 1.10 crores were denied to the appellants on the ground that the SSA which took the benefit did not receive the capital goods and utilize the same in the same SSA. On the premise that this credit was illegally utilized for payment of service tax on output service, the Department also raised demand of service tax on output service to the extent the credit was taken. Both are under challenge in Appeal No.S/134/2007.

5. In this case, it is the submission of the learned Counsel that, technologically, the capital goods should be held to have been used in SSA Salem also. The learned Counsel elaborates the point by submitting that the capital goods installed in any SSA anywhere in India are involved in M/s. BSNL's activity of rendering the taxable services to subscribers all over the country and, therefore, the capital goods on which SSA Salem took CENVAT credit should be held to have been used by that SSA also. We have heard the learned SDR also, who again reiterates the findings of the Commissioner.

6. After giving careful consideration to the submissions, we are of the view that the arguments of the learned Counsel, which are technology based, merit consideration. It is noted that the learned Commissioner chose to go literally by expressions like 'factory of production' figuring in the relevant CENVAT Credit Rules. Prima facie, we are of the view that the rules have not been construed in a manner which suits the technological features of the taxable services. If some oiling of the joints is done, an impasse, which might arise in the application of rules to real facts at hand, can be got over. In this view of the matter, we grant waiver of predeposit and stay of recovery in respect of the dues adjudged by the Commissioner and challenged in Appeal No.S/134/2007 also.