IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

STA-11-2017 (O&M)
Date of Decision: 13.3.2019

M/s Aanex Services, Mohali

...Appellant

Versus

Commissioner of Central Excise, Chandigarh-I and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Vikrant Kackria, Advocate for the appellant.
Mr. Sourabh Goel, Advocate for respondent No.1.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the appellant under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 30.5.2012 (Annexure A-9) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") in Appeal No. 268 of 2008, claiming the following substantial questions of law:-

(i) Whether the order passed by the Appellate Tribunal disallowing the Cenvat Credit is legal when there is no dispute with respect to payment of Service Tax and its utilization in providing the output service?

(ii) Whether the Hon'ble Tribunal is correct in disallowing the credit solely on the grounds that the invoices do not have complete particulars when they could have directed the Adjudicating

Authority to verify the same in view of specific provisions of Rule 9(2) of Cenvat Credit Rules?

(iii) Whether the Hon'ble Tribunal is correct in holding that the extended period of limitation is invokable when the facts and circumstances clearly prove that there could be no motive to evading any tax and the extended period had not been specifically invoked in the show cause notice?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein are that the the appellant had made bulk booking for cargo space with Indian Airlines Ltd. under 'City Specific Direct Shipper Scheme' (in short "the Scheme") and redistributed the cargo space in retail to its customers for a price. Since concessional rate was offered to the persons who made the booking of air cargo in bulk from Indian Airlines, the appellant was making profit by selling the space in small parcels. The appellant had paid service tax under the category of "Business Auxiliary Service" and availed Cenvat Credit amounting to ₹ 13,51,976/- of the service tax charged by the Indian Airlines on the amount paid under the Scheme. During the course of audit, an objection was raised that the Cenvat Credit of ₹ 13,51,976/- had been availed on the photocopies of the receipts issued by the Indian Airlines, New Delhi in favour of the appellant. In response thereto, the appellant produced the certificates and bills dated 22.8.2005 (Annexure A-1) issued by the Indian Airlines. Pursuant to the letter dated 16.2.2007 (Annexure A-2) sent by the appellant, the Indian Airlines vide letter dated 19.2.2007 (Annexure A-3) certified the required information about service tax registration number and complete address. A

notice dated 14.11.2006 (Annexure A-4) was issued to the appellant to show cause as to why the service tax amounting to ₹ 13,51,976/- for the period from 1.4.2005 to 30.9.2005 be not recovered. The appellant furnished reply dated 4.12.2006 (Annexure A-5) to the said show cause notice. The Adjudicating Authority vide order dated 12.1.2007 (Annexure A-6) disallowed the Cenvat Credit and confirmed the demand of service tax of ₹ 13,51,976/- along with interest and also imposed a penalty of equal amount of ₹ 13,51,976/- under Section 78 of the Act. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) along with an application for waiver of pre-deposit. The Commissioner (Appeals) directed the appellant to deposit a sum of ₹ 6,00,000/- towards service tax and ₹ 3,00,000/- towards penalty as a pre-condition for hearing of the appeal. The appellant moved an application for modification of the order which was not accepted. Accordingly, the Commissioner (Appeals) vide order dated 3.2.2007 dismissed the appeal for non-compliance of the stay order. The appellant filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated 18.9.2007 directed the appellant to make pre-deposit of ₹ 6,00,000/- and ₹ 3,00,000/- towards service tax and penalty, respectively. On deposit of the aforesaid amount, the Tribunal vide order dated 26.11.2007 disposed of the appeal directing the Commissioner (Appeals) to decide the appeal of the appellant on merits. In pursuance thereto, the Commissioner (Appeals) vide order dated 31.1.2008 (Annexure A-7) rejected the appeal of the appellant holding that the appellant had availed the Cenvat Credit on the basis of photocopies of the receipt issued by the Indian Airlines. Against the order, Annexure A-7, the appellant filed an appeal (Annexure A-8) along with application for stay on 2.5.2008 before the Tribunal. The Tribunal vide order dated 30.5.2012 (Annexure A-9) dismissed the appeal by observing that the documents on which credit had been claimed, were not proper documents and that the extended period can be invoked for raising the demand. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the original invoices had been lost and Cenvat Credit was claimed on the basis of the photocopies of the receipts issued by the India Airlines which was wrongly disallowed by the authorities below. He has placed reliance upon the judgment of Jammu and Kashmir High Court in **Shivam Electrical Industries v. Union of India, OWP-928-2017 and MP-1-2017** decided on 23.8.2017.

4. On the other hand, learned counsel for the revenue supported the order passed by the authorities below.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal.

6. The Adjudicating Authority disallowed the Cenvat Credit to the appellant by noticing that the appellant had availed the credit on the basis of photocopy of the receipt issued by Indian Airlines in the name of M/s Aanex Services, New Delhi and that the receipt does not show the address of the person receiving the taxable service, description, classification and value of taxable service provided, registration number of the service provider. The relevant findings in this regard read thus:-

> "But in the present case the party has availed credit on the basis of photocopy of receipt issued by the Indian Airlines in the name of M/s Aanex Services. The receipt does not show the address of the person receiving taxable

services, description, classification and value of taxable service provided, registration no. of the service provider. The receipt issued by the Indian Airlines nowhere indicates that the same is an invoice, a bill or challan issued by a provider of input service.

Accordingly, I find that the same is not a specified eligible document under sub-rule (1) of Rule 9 of Cenvat Credit Rules, 2004 for availment of Cenvat Credit."

7. On appeal, the Commissioner (Appeals) upheld the said findings by observing as under:-

"The facts in the present case indicate that the appellants have availed credit on the basis of photocopy of receipt issued by Indian Airlines in the name of M/s Aanex Service, New Delhi. The receipt is not a document specified under Rule 9(1) of the Cenvat Credit Rules, 2004 and therefore, cenvat credit availed on such documents is not admissible. Further, the receipts do not show the address of the person receiving taxable services, description, classification and value of taxable service provided and registration number and, therefore, these receipts cannot be treated as valid document under provisions of Rule 9(2) of the Cenvat Credit Rules, 2004. Thus, it is evidence that the receipts on which credit was availed are not valid documents for taking cenvat credit in terms of provisions of Rule 9 (1) or 9(2) of Cenvat Credit Rules, 2004."

8. The Tribunal while affirming the aforesaid findings of fact recorded by the Adjudicating Authority and the Commissioner (Appeals), had in para 11 to 13 held as under:-

> "11. The questions in para 9 above are listed just to demonstrate the importance of insisting on a document prescribed under Rule 9(1) of the Cenvat Credit Rules, 2004 for allowing credit. If such invoices were being issued by IAL the above issues would have got settled in normal course. If IAL did not want to follow the procedure of issuing invoices for impugned services rendered by them and showing the service tax payable, IAL is only ducking the above queries which are fundamental for levying service tax on the impugned activity and in allowing Cenvat Credit as claimed by appellant.
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> 12. We further note that the decisions relied upon by the appellant as mentioned in para 7 above were in relation to goods used as inputs in respect of which this type of questions do not arise and it is easy to apply the proviso to Rule 9(2) of the said rules. Input services are on a different footing altogether. In our opinion, it is not a case of just ascertaining whether the tax amount has been deposited in the treasury by looking at the bank statements and then allowing credit to any person who stakes claim for credit of the tax so deposited.
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> 13. In view of the above discussion and in view of the

provisions in Rule 9(1) of Cenvat Credit Rules, 2004, we hold that the appellant is not entitled to the credit in question."

9. No illegality or perversity could be pointed out by the learned counsel for the appellant in the concurrent findings of fact recorded by the authorities below warranting interference by this Court. No satisfactory explanation has been furnished by the learned counsel for the appellant for not producing the original invoices instead of photocopies which were produced. The authenticity of the said photocopies was doubted for the reasons recorded by the authorities as noticed hereinbefore. In such circumstances, the claim of the appellant was rightly rejected by the authorities below. Further, referring to the judgment in **Shivam Electrical Industries's case (supra)** relied upon by the learned counsel for the appellant, in view of the factual matrix as referred above, suffice it to notice that the said pronouncement being based on its own facts does not advance the case of the appellant.

10. No question of law muchless a substantial question of law arises in this appeal. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 13, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**