(2022) 02 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 50409 Of 2021

Bharat Rubber Works Pvt Ltd Vs Commissioner, Central Excise And CGST-Jabalpur??

Date of Decision : 07-02-2022

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 9

Citation : (2022) 02 CESTAT CK 0009

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard the parties.

2. The issue involved in this Appeal is whether the Appellant who have taken the Cenvat credit on input services and have reflected the same in their ER-1 return and also erroneously in the ST-3 returns also. Subsequently, the Appellant on implementation of GST regime w.e.f. 1st July 2017 transferred the balance of credit as on 30th June 2017 Rs. 51,23,834/- as per the ER-1 return by filing form TRAN-1 which also included the credit of Service Tax Rs. 3,32,102/- (excluding cess).

3. The Appellant had also been filing ST-3 returns being registered under the Service Tax provisions and accordingly reflected the credit as unutilized in their ST-3 returns for June 2017, showing unutilized credit balance of Rs. 3,32,990/- (incl. cess).

4. The TRAN-1 form of the Appellant was accepted by the Revenue and was allowed the transfer of credit to GST regime Rs. 51,23,834/-. Pursuant to audit, it appeared to Revenue that Appellant have availed Cenvat Credit on input services amounting to Rs.3,32,990/- in the ST-3 return, without having any valid documents as required under Rule 9. Accordingly, Revenue issued SCN for the period prior to 1st July 2017 proposing to demand Service Tax of Rs.3,32,990/- alongwith penalty. SCN was adjudicated on contest whereby the Assistant

Commissioner observed that taking of credit is found correct. However, as the Appellant have not taken transfer of the credit to GST regime of the amount shown in the ST-3 returns, the same amounts to reversal, and accordingly dropped the proposed demand and penalty.

5. Being aggrieved Revenue preferred before Commissioner (Appeals) and the Appellant-assessee have also filed cross-objections. The Commissioner (Appeals) observed that the credit is wrongly taken as per Rule (9) of CCR for want of supporting documents and accordingly ordered for recovery of proposed amount with equal amount of penalty.

6. Being aggrieved the Appellant-asseessee is before this Tribunal.

7. On appreciating the facts and circumstances, I find that the same amount of Cenvat credit of Rs.-3,32,102/- (excluding Cess) has also been shown as credit in the ER-1 Return, and the same have been rightly allowed without dispute to the Appellant, and also permitted to be carried forward to the GST regime. I also find that the Assistant Commissioner have noted that the Cenvat credit arises from payment of Service Tax under 'reverse charge mechanism' which is supported by challans. Thus, I find that there was situation of confusion both at the end of Revenue and end of the assessee, due to showing of the same credit in both the returns.

8. Accordingly, I find that the show cause notice itself should not have been issued in the facts of the case. Accordingly, I allow this Appeal and set aside the impugned order. The Appellant is entitled for the consequential benefit in accordance with law.

(Order dictated in the open court)