
(2022) 09 BOM CK 0101

In the Bombay High Court

Case No : Central Excise Appeal No. 17 Of 2021

Commissioner Of CGST & Central Excise, Mumbai (West)

APPELLANT

Vs

M/S. Patel Integrated Logistics, Ltd

RESPONDENT

Date of Decision : 21-09-2022

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2, 9(1)

Service Tax Rules, 1994 — Rule 4A

Central Excise Act, 1944 — Section 35G

Citation : (2022) 09 BOM CK 0101

Hon'ble Judges : Dhiraj Singh Thakur, J; Valmiki Sa Menezes, J

Bench : Division Bench

Advocate : Ram Ochani, Prakash Shah, Jas Sanghavi

Final Decision : Dismissed

Judgement

Dhiraj Singh Thakur, J

1. The present appeal has been preferred under Section 35G of the Central Excise Act, 1944 (for short "the Act") against the order of Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (CESTAT) dated 09th September, 2019.

2. The questions which have been proposed for our consideration are as under:

(I) Whether in the facts and circumstances of the case and in law the CESTAT was correct in deciding that the Cenvat credit shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules?

(ii) Whether in the facts and circumstances of the case and in law the CESTAT was correct that overlook the mandatory provisions of sub-rule (1) of Rule 9 of the CCR, 2004?

(iii) Whether in the facts and circumstances of the case and in law the CESTAT

was correct in not appreciating that the service tax paid by airlines at all and that the recipient of the service is the shipper of the goods/documents and not the appellant?

(iv) Whether in the facts and circumstances of the case and in law the CESTAT was correct in not appreciating that the Appellant is Agent?

3. Briefly stated the material facts are as under:

Two show cause-cum-demand notices came to be issued against the Respondent, in which it was alleged that Cenvat Credit had been 'irregularly' availed on improper document i.e. on the basis of Cargo Sales Report (CSR), which was a summary of the Air Way Bills, which it was stated was not in conformity with Rule 9(1) of the Cenvat Credit Rules, 2004., with a view to discharge their service tax liability in respect of the taxable services provided during the period from 2009-10 to 2012-13. The matter was adjudicated upon by the adjudicating authority.

The adjudicating authority vide its order dated 16th July, 2015 held in favour of the Respondent and dropped both the show cause notices by holding that the Air Way Bills could be considered as an invoice/bill or Challan, as per Rule 4A of the Service Tax Rules, 1994. It was thus held that the assessee Respondent had rightly taken the Cenvat Credit, as per provisions of Rule 9(1) of the Cenvat Credit Rules, 2004.

4. A perusal of the order passed by the adjudicating authority, would show that after perusal of the copies of the Air Way Bills, the following ingredients were found to be contained therein, which were otherwise required to be contained in the invoice/bill or Challan:

- . Invoice no {a Unique Air Way Bill}
- . Service Tax Registration no (of the air line)
- . Name of the service provider (i.e. airline)
- . Name of the service receiver (the assessee)
- . Value of service
- . Nature of service
- . Service Tax amount

5. The said order was challenged before the Tribunal, in which contrary to the grounds alleged in the show cause-cum-demand notice, the revenue questioned the order of the adjudicating authority on the ground that the activity of the assessee was not an 'output service', within the meaning of Rule 2 of the Cenvat Credit Rules, 2004. The Tribunal, however, dismissed the appeal on the ground that the ground on which the appeal is sought to be fled, was beyond the scope of adjudication of the show cause-cum-demand notice.

6. Learned Counsel for the Appellant has not been able to convince us that the view expressed by the Tribunal was in any manner perverse. It is trite law that the show cause notice is the foundation in the matter of levy and recovery of duty penalty and interest and since the grounds on which the appeal was preferred before the Tribunal did not find any basis in the show cause-cum-demand notice, the appeal on that basis could not have been entertained or allowed.

7. Be that as it may, we do not find any reason to interfere with the order of the Tribunal. The central excise appeal is, accordingly, dismissed.