(2024) 04 CESTAT CK 0047

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.41854 Of 2014

M/S. Channel Bharat Entertainment Pvt. Ltd — APPELLANT

Vs

Commissioner Of GST & Central Excise — RESPONDENT

Date of Decision : 25-04-2024

Acts Referred:

Citation : (2024) 04 CESTAT CK 0047

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : G. Natarajan, Anandalakshmi Ganeshram

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. The period of dispute in this appeal is 2007–2008 to 2010–2011. Brief facts are the appellant is engaged in providing taxable services under broadcasting service, had also availed credit of service tax paid on various input services and have been using such credit for payment of their service tax liability. It is the case of the appellant that this credit was accumulated under a separate ledger from which entries were made for utilisation of such credit towards the payment of the service tax liability on the output services. It is also their case that because of financial difficulties, the service tax payable by them over and above this CENVAT credit was not paid.

2. It appears that the appellant filed their ST-3 returns belatedly for the years and challenge, on various dates and thereafter, the Revenue issued a Show Cause Notice dated 22.10.2012 proposing inter-alia to demand service tax liability for the period in question of Rs. 66,78,141/- along with appropriate interest and penalties. It appears that the appellant filed a detailed reply rebutting the allegations of the Revenue and also indicating that they had claimed credit on various input services to the tune of Rs. 41,13,340/- and also claimed to have furnished the list of credits availed along with invoice copies.

They also claimed to have demonstrated that the remaining service tax liability after utilisation of CENVAT credit was also remitted along with interest for which, a detailed reconciliation statement was also furnished. The Commissioner of Central Excise and Service Tax, Chennai having considered the reply / explanation of the appellant during adjudication, however, did not accept the payment of service tax through CENVAT credit and proceeded to confirm the duty liability as proposed in the show cause notice. It is against this order that the present appeal has been filed before this forum.

3. Heard Shri G. Natarajan, learned Advocate for the appellant, who contended at the outset that the original authority did not consider not only the claims of the appellant for having limited the tax liability through credit, but also did not refer to any of the supporting documents furnished. According to the learned Advocate, the liability was required to be discharged by the appellant for the services for which the demand was raised either in cash or through CENVAT credit. He would also take us through various documents which were filed before the original authority in support of his case about the availability of credit along with the date of remittances as reflected into their books. He would thus request for remanding the matter back to the file of the Original Authority with a direction for de-novo adjudication after considering the evidences furnished by the Appellant.

4. Per contra, Smt. Anandalakshmi Ganeshram, learned Assistant Commissioner supported the findings of the original authority, but however, she has no objection if the matter is remanded to the file of original authority.

5. We have heard the rival contentions and we have carefully perused the impugned order and other documents relied by the appellant; the only question that arises for our consideration is, “whether the original authority is justified in ignoring the payment through CENVAT credit?”

6. From the documents made available before us, we do not have any doubts as to the availability of CENVAT credit in the books of the appellant. But however, the lower authority has brushed aside the request of the appellant which is borne on record, but it was incumbent upon the original authority discharging the role of an adjudicating authority to verify/cross verify and then give proper findings through speaking order as to whether the claims of the appellant were acceptable or not. It is precisely the case of the appellant that they had discharged service tax liability to a larger extent through credit balance, but however, the original authority has ignored the claims of the appellant, which is not in accordance with law. Further, it is not even the case of the Revenue that the claims of the appellant were wrong insofar as the availability and the utilization thereof, CENVAT credit towards the payment of their service tax liability, however as contended by the learned Advocate, there may be a slight delay, for which statutory provisions are available to safeguard the interest of the revenue. Hence, according to us if the stand of the appellant is to be accepted upon verification, then, the demand once again would amount to double

taxation, which is not the spirit of the taxing statute. In that view of the matter, we deem it most appropriate to set aside the impugned order and remit matter back to the file of the original authority for de-novo adjudication, who verify the claims of the appellant and thereafter, pass a speaking order in accordance with law. It goes without saying that the appellant shall be afforded reasonable opportunities of being heard in accordance with the principles of natural justice before passing de-novo adjudication order. Considering the fact that the issue relates to year 2013–14, it would be appropriate to direct the original authority to pass a de-novo adjudication order preferably within a period of 60 days from the date of the receipt of this order by the concerned Commissionerate. All the issues/contentions are left open.

7. Resultantly, the impugned order is set aside and the appeal is allowed by way of remand to the original authority in the above terms.