(2021) 10 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 78573 Of 2018

M/s Jai Balaji Industries Ltd. (Unit III) APPELLANT

Vs

Commissioner Of CGST And Excise, Bolpur RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(l)

Citation : (2021) 10 CESTAT CK 0016

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The instant appeal has been filed by the assessee, M/s. Jai Balaji Industries Ltd (hereinafter referred to as the Appellant) against denial of Cenvat Credit of Rs.3,47,642/- for the period from April 2009 to December 2011 vide the Adjudication Order dated 28.03.2017 as further upheld by the Ld. Commissioner (Appeal) vide Order in Appeal dated 19.06.2018 which has been assailed in this appeal.

2.1 Briefly stated, the facts of the case are that the Appellant is engaged in the manufacture of sponge iron and allied products and is registered with the Central Excise Department during the period in dispute. The Appellant is availing the benefit of Cenvat Credit as per the provisions of the CENVAT Credit Rules, 2004 (Credit Rules).

2.2 Show Cause Notice dated 27.06.2014 was issued to deny the credit availed by appellant on the strength of invoices issued by its Head Office as 'ISD' on the ground that the said input service credit was availed on the basis of photocopy of the certificate issued by the Banks in favour of Head Office (ISD). It was also alleged in the SCN that the processing and upfront fee are generally charged by the Banks during processing of loan application and the said service is in no way used directly or indirectly in or in relation to manufacture of final products of the appellant.

3. Heard Shri S.Mohapatra,Ld.General Manager (Taxation) for the Appellant and Sri Joydip Chattopadhyay, Ld. A.R. for the Revenue through video conferencing and perused the appeal records. Arguments advanced by the representatives from both sides have been duly considered.

4. On perusal of the adjudication order dated 28.03.2017, I find that the Ld. Asst. Commissioner has denied the credit by observing that the services of the banks for financial requirement were not directly or indirectly in connection with the manufacture of final product and hence not eligible as input service under Rule 2(l) of the Credit Rules. He gave no finding with regard to the entitlement of credit availed on the photocopy of the certificate issued by the Bank as was alleged in the SCN. In the first appeal, the Ld. Commissioner (Appeals), upheld the credit entitlement in-principle, as availed by the appellant on Banking services but observed that credit cannot be denied on photocopy documents.

5. I find that there is no dispute about the receipt of services inasmuch as the appellant has duly received the services from Bank and that payment of the Banking charges for loan processing and upfront fee have been duly made since not disputed in the impugned orders. It is also seen that the order passed by the authorities below have travelled beyond the allegations made in the SCN. When no dispute was made by the adjudicating authority with regard to the photocopies of documents, the objection raised by the Ld. Commissioner (Appeals) is not justified when, in-principle, he has agreed with the service eligibility under Rule 2(l) of the Credit Rules and the fact that receipt of Banking service is not in dispute. Hence, I do not find any reason to deny the credit and hence, the appeal is liable to succeed. With regard to the pleading made by the appellant on limitation, I find that SCN has been issued in June 2014 by invoking extended period of limitation. Apart from the general aversion, there is no evidence to show that credit has been wrongly availed by way of fraud or suppression when the credit amount availed by the appellant has been duly disclosed in the periodical returns filed with the Department. Hence, the impugned demand is also barred by limitation and hence, not sustainable on that count also.

6. The appeal is thus allowed with consequential relief, if any.

(Pronounced in the open court on 01.10.2021)

