(2025) 01 CESTAT CK 1572

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 50606 of 2024 - SM

M/s Shriram Rayons @APPELLANT @Hash Commissioner of CGST & Central Excise, Udaipur @RESPONDENT

Date of Decision : 24-01-2025

Acts Referred:

Finance Act, 1994 — Section 65B(44), 66D, 75, 77(2)
Cenvat Credit Rules, 2004 — Rule 9(1)

Citation : (2025) 01 CESTAT CK 1572

Hon'ble Judges : Dr. Rachna Gupta, Member (J)

Bench : Single Bench

Advocate : S.C. Kamra, N.D. Dubey, Manish Kumar Chawda

Final Decision : Allowed

Judgement

Dr. Rachna Gupta, J

1. The present appeal has been filed by M/s Shriram Rayons. The appellant is engaged in providing taxable "service" relating to "Renting of Immovable Property", Transport of Goods Transport Agency Service, "Business Auxiliary Service", Maintenance or Repair Service" and "Scientific and Technical Consultancy Service" which are covered under definition of "service" under provisions of Section 65B(44) of the Finance Act, 1994 and is not covered under services specified in "Negative List" under Section 66D of the Finance Act, 1994. Department alleged that the appellant has wrongly taken/availed Cenvat credit of Input Services amounting to Rs. 18,09,998/- (including Cesses) during the period from April 2017 to June, 2017 in contravention of Rule 9(1) of the Cenvat Credit Rules, 2004. The same is proposed to be reversed along with proportionate interest as per Section 75 of the Finance Act, 1944 and the appropriate penalty as per Section 77(2) of the Act. The proposal was got confirmed vide Order-in-Original No. 69/2020 dated 01.07.2020. In the appeal against the said order, the demand for an amount of Rs. 12,82,601/- has been set aside. However, the demand for Rs. 5,26,497/- is still confirmed and appeal has partly been rejected by Commissioner (Appeals). Being aggrieved of said

rejection, appellant is before this Tribunal.

2. We have heard Shri S.C. Kamra & Shri N.D. Dubey, Advocates for the appellant and Shri Manish Kumar Chawda, Authorized Representative for the Revenue.

3. Learned counsel for the appellant submitted that the reversal of Cenvat credit amounting to Rs. 5,26,497/-, has been confirmed only based on the fact that the Challan No. 28067 dated 06.07.2017 and Challan No. 29936 dated 06.07.2017 vide Entry No. 1668 dated 06.07.2017 showing corresponding payment have not been produced. Learned counsel mentioned that in fact the correct serial number of the requisite challan was 28069 instead of 28067 and was 29935 instead of 29936. Though Commissioner (Appeals) dealt this ground but didn?t accept holding that there is no evidence to prove the same. Being aggrieved of these findings, the appellant is before this Tribunal.

4. Learned counsel for the appellant has submitted that the impugned order has ignored the Final Order No. 50503 of 2022 dated 06.06.2022 passed by this Tribunal remanding the matter with the direction to appreciate the challans and the typographical errors contained in the challans. It is submitted that challan numbers given in the AG Audit report/show cause notice were misprinted and hence do not match with the challan numbers available with the appellant. Despite the entire evidence produced by the appellant the same has been ignored and hence the demand confirmed is contrary to the said evidence and contrary to the directions of remand. The order is accordingly, prayed to be set aside and appeal is prayed to be allowed.

5. Learned Departmental Representative, on the other hand, has reiterated the findings arrived at by Commissioner (Appeals) while confirming the demand in question. Impressing upon no infirmity therein. The appeal is prayed to be dismissed. However, it is simultaneously acknowledged that there had occurred a typographical error in the AG Audit report/show cause notice vis-à-vis. the challan numbers in question.

6. Having heard both the parties, we observe that initially the following demand was raised by the show cause notice dated 1.10.2019:

S. No.

Bill Entry No. and date

Invoice No./Challan No.

Amount (in Rs.)

1.

1668/06.07.2017

28067/06.07.17

461224

2.

1669/06.07.2017

29936, 29550, 29099, 29308/06.07.17

620269

3.

1702/30.07.2017

4079/21.07.17

52996

4.

1700/30.07.2017

08/20.07.2017

674609

Total

18,09,098

7. The said entire demand was initially confirmed by the order in original dated 01.07.2020. Commissioner (Appeals) at first round of litigation, vide Order-in-Appeal No. 44/2021 dated 11.02.2021 had confirmed the demand only for Rs. 5,26,497/- and dropped the following demands:

Name of the service

Challan number & Date

Amount of the challan (in Rs.)

Amount of the service tax paid & Cenvat credit availed (in Rs.)

Comments

Legal Consultancy

29308 dated 06.07.2017

88126/-

485610/-

For the services received during 01.06.2017 to 30.06.2017

Manpower Recruitment Service

29550 dated 06.07.2017

485610/

Works Contract Service

29099 dated 06.07.2017

265116/-

34256/-

Input service credit of ISD of Corporate, New Delhi

08 dated 20.07.2017

674609/

674609/-

Total

12,82,601/-

8. the final order of CESTAT dated 06.06.2022 set aside the said order in appeal dated 11.02.2021 and remanded the matter observing that in the said order in appeal the demand for an amount of Rs. 12,82,601/- out of Rs. 18,09,098/- (as proposed in show cause notice) was set aside and the demand vis-à-vis the impugned amount of Rs. 5,26,497/- was confirmed on the ground that Challan No. 28069 dated 06.07.2017 and 29935 dated 06.07.2017 were not relevant. However, the matter was remanded back for fresh decision after verifying the alleged typographical error about both the challan numbers directing as follows:

"6. ……..However, keeping in view that the documents are impressed upon to have been annexed on record and to have been provided to both the Original Adjudicating Authorities. The typographic error in challan number and corelation of the compiled record of the appellant is impressed upon by the learned Counsel. Keeping in view the same, the request of remanding the matter is hereby accepted. The matter is remanded back to the Commissioner (Appeals) to appreciate both the challans and to look into the documents produced by the appellant and to appreciate as to whether there is any typographic error. It is thereafter to pass the fresh decision without being affected by any findings in this order."

9. The order-in-appeal bearing No. 59/2024 dated 08.02.2024 is passed thereafter. We observe that despite those directions of this Tribunal the findings in the impugned order in appeal challenged vide the present appeal are same. Both the challans still been same, however, on the ground that though the service tax register mentioning availment of credit mentions the challan number as 28069 and 29935 but the register does not bear signature of the authorized signatory of the appellant. Hence authenticity about the typographical error stands unverified. The demand of Rs. 5,26,497/- thus has again been confirmed. It has been held as follows:

“First, I take up the issue of ITC amounting to Rs. 461224/-. As per the AG Audit, the appellant had taken ITC of Rs. 461224/- on the strength of Challan No. 28067/06.07.2017 vide Entry No. 1668 dated 06.07.2017 whereas the appellant has claimed that correct serial number of challan was 28069 dated 06.07.2017. In support of their claim the appellant has submitted copy of ? SERVICE TAX REGISTER? mentioning availment of Credit of Rs. 461224/-(ST) on the strength of document No. 28069 dated 06.07.2017. I observe that the register is manually maintained and does not bear signature of authorized signatory of the appellant. In absence of certification by way of putting signatures with seal, the said register is merely a piece of paper, the authenticity of which cannot be verified. I find that the said Service Tax Register contains several other entries; the appellant has not submitted any document so as to corroborate these entries. Considering the above facts, I am not inclined to accept the contention of typographical error especially when there is no such mistake in other challan numbers. Therefore, the claim of the appellant with regard to Cenvat credit of Rs. 4,61,224/- is not acceptable.”

10. The perusal is sufficient for me to hold that the Commissioner (Appeals) has failed to follow the directions of the remand order of this Tribunal. I observe that the appellate authority in remand proceedings did not raise any objection against Challan No. 28069 dated 06.07.2017 by which the appellant deposited service tax of Rs, 5,03,405/- under reverse charge on GTA services availed by the appellant. Both the lower authorities did not doubt the authenticity of this challan. It is not the case of the Revenue that the above challan is fake document. The appellate authority has disallowed the Cenvat credit of Rs. 4,61,224/- availed against challan No. 28069 dated 06.07.2017 merely on the technical ground that the register was maintained by the appellant manually and it did not bear signatures of the authorized representative with seal against the entries. He failed to appreciate that this is hyper-technical ground for disallowance of credit. It is a settled law that the Cenvat credit scheme is a beneficial scheme for the taxpayers and the benefit of this scheme cannot be blocked or taken away from the taxpayers on technical and procedural grounds. The appellate authority failed to appreciate that both Service Tax Payable Registers and Service Tax Credit Registers were signed by authorized representative at the end of each month where summary of the transactions of the month was prepared and tabulated at the month end. It appears that the appellate authority has overlooked the signatures in both the registers in discarding these registers as merely a piece of paper. The objection of the appellate authority that the registers were maintained manually is without any basis. He failed to appreciate that the Government has not mandated that records of Service Tax Payable Register and Service Tax Credit Register should be maintained by the taxpayer or on other electronic device. These records are being maintained by the appellant since beginning and no objection was raised by the Department or by the Audit Team. Hence the objection of the appellate authority to the effect that the registers are maintained manually by the

appellant is without any valid basis and the same is not sustainable in the eyes of law.

11. The appellant in terms of CBEC Circular No. 207/5/2017-ST dated 28.09.2017 and in terms of relevant provisions of Cenvat Credit Rules, 2004 is eligible for Cenvat credit of service tax paid on input services. The Cenvat credit was admissible in respect of services received after the payment of service tax. Based on the copies of challans/invoices mentioning the service tax paid and Cenvat credit availed that the Cenvat credit of Rs. 12,82,601/- has been allowed. These findings are held to be inconformity of the statutory provisions.

12. With respect to the amount disallowed, as already observed, it has been disallowed for want of the correct challan. With respect to challan dated 06.07.2017 in Entry No. 1668 the appellant availed the GTA services during the month of June 2017 deposited service tax under reverse charge in July 2017. In terms of above circular, the appellant was entitled to take the credit thereof. Under the said Entry No. 1668 admittedly there is one challan. Appellant has claimed it to be one bearing No. 28069 and has produced the said challan. Department has failed to produce any challan of 06.07.2017 which bears No. 28067. In absence thereof, we hold that the challan number in show cause notice (28067) is nothing but a typographical error. Substantial benefit which is otherwise available to the appellant cannot be denied merely on the basis of the typographical error that too, committed at the end of the department. Similar error has been committed with respect to challan filed with Entry No. 1669 dated 06.07.2017. Only one challan admittedly pertains to the said entry. Appellant has claimed it to be the Challan bearing No. 29935 dated 06.07.2017. For the same reason as above mentioning of 29936 as challan number is held to be nothing but a typographical error.

13. Since the partial amount of Cenvat credit of Rs. 5,26,497/-has been rejected based on the above observed typographical error, we hold that Commissioner (Appeals), despite the specific directions to this effect in the remand order, has failed to comply with the directions of the order of this Tribunal. The findings rejecting the partial claim of the appellant are contrary to the Commissioner (Appeal?s) own findings based whereupon the remaining amount of credit has been allowed by Commissioner (Appeals). Such an order which otherwise in violation of the principles of judicial discipline cannot sustain. Therefore, same is hereby set aside. Consequent thereto the appeal stands allowed.

(Pronounced in open Court on 24.01.2025)

