
(2024) 12 CESTAT CK 1244

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

Case No : Excise Appeal No. 55585 of 2023 - SM

**National Engineering Industries Limited @APPELLANT @Hash
Commissioner, CGST And Central Excise, Jaipur @RESPONDENT**

Date of Decision : 20-12-2024

Acts Referred:

Central Excise Act, 1944 — Section 11A
Cenvat Credit Rules, 2004 — Rule 3, 4(7), 7, 9, 9(b), 9(1)(bb), 9(1)(e), 9(2)
Service Tax Rules, 1994 — Rule 4(a), 9(1)(bb)/9(1)(e)

Citation : (2024) 12 CESTAT CK 1244

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

Bench : Single Bench

Advocate : Dhruv Tiwari, Aarushi Prabhakar, Kuldeep Rawat

Final Decision : Allowed

Judgement

Rachna Gupta, J

1. M/s National Engineering Industries Ltd. – the appellant is engaged in manufacture of bearing, bearing components, machines and are also registered for providing/receiving various taxable services. During the course of verification of Cenvat records of input services maintained by the appellant, department observed that the appellant has availed input service tax credit on the basis of invoices which are not the prescribed documents as per Rule 4(7) and Rule 9 of Cenvat Credit Rules, 2004 (CCR) as well as Rule 4(a) of Service Tax Rules, 1994. The address mentioned in the invoices was observed wrong showing that the input service in question has not been received by the appellant. Hence the Cenvat credit on the basis of those invoices amounting to Rs. 16,12,208/-was proposed to be recovered.

2. During the said course of verification itself, department also observed that the input service tax credit availed on the challans deposited against the Comptroller and Auditor General (C&AG) is also not permissible and is contrary to Rule 9(b) of Cenvat Credit Rules, 2004. Accordingly, the Cenvat credit availed on those challans amounting to Rs. 32,95,447/- was also alleged to have been wrongly

availed and thus was proposed to be recovered. In view of those observations, the department issued a show cause notice bearing No. 19/2016-17 dated 4.11.2019 proposing the recovery of Cenvat credit of Rs. 49,07,655/- (Rs. 16,12,208/- + Rs. 32,95,447/-) along with the proportionate interest and the appropriate penalties. The said proposal was initially confirmed vide the order in original bearing No. 29/2019 dated 30th June 2021. Appeal against the said order has been rejected vide order in appeal No. 13/2023 dated 6.3.2023. Being aggrieved, the appellant is before this Tribunal.

3. We have heard learned Advocates and learned Authorized Representative for Revenue

4. Learned Counsel for the appellant has mentioned that both the observations at the time of verification of appellant's record are absolutely wrong. The appellant has rightly availed the Cenvat credit of Central Excise duty and service tax paid on various inputs, capital goods and input services in accordance with the provisions of Cenvat Credit Rules, 2004. The availment of Cenvat Credit is otherwise an indefeasibly right of the assessee – appellant. With respect to the Cenvat credit of Rs. 16,12,208/- it is submitted that the same has been availed on the invoices issued by the service provider which contain all the details as have been specified under proviso to Rule 9(2) of Cenvat Credit Rules. The invoices on record are impressed upon. It is also submitted that no dispute has been raised by the department regarding receipt of the said input services as well as the amount of tax paid thereupon. The availment of Cenvat credit cannot at all be denied. Learned counsel has relied upon the decision of this Tribunal in their own case reported as National Engineering Industries Limited Vs. Commissioner of Central Excise & CGST, Jaipur vide Final Order No. 58084/2024-CESTAT-Delhi along with following other decisions:

(i) Novozymes South Asia Pvt. Ltd. Vs. Commissioner of C. Ex., Bangalore – 2015 (38) STR 204 (Tri.-Bang.);

(ii) Bhalla Techtran Industries Ltd. Vs. CCE, Noida – 2015 (7) TMI 1175 – CESTAT, New Delhi

(iii) Tractors India Pvt. Ltd. Vs. Commissioner of Service Tax, Kolkata– 2023 (9) TMI 1092 – CESTAT – Kolkata.

5. It is also mentioned that the appellant follows ISD distribution mechanism wherein all common service invoices are booked by the appellant and thereafter distributed among Jaipur, Newai and Manesar units of the appellant in accordance with Rule 7 of CCR, 2004. This fact is also evident from the ST-3 returns filed by the appellant for the relevant period. The only issue is that the suppliers have inadvertently mentioned the incorrect address on the invoices. But the moment the said discrepancy was noticed, the service providers have rectified the inadvertent mistake and had issued supplementary invoices by mentioning the correct address of the appellant. The said supplementary invoices are also on record. Hence, the Cenvat credit availed amounting to Rs.

32,95,447/- has also been wrongly denied. Reference to Rule 9(1)(e) of CCR has been drawn with the mention that the Rule 9(1)(bb) of CCR has wrongly been invoked. The following decisions have been relied upon:

(i) Ineos Stryolution India Ltd. Vs. CCE & ST, Vadodraa-1 – 2022 (3) TMI 319 – CESTAT Ahmedabad;

(ii) Nissan Motor India Private Ltd. Vs. Commissioner of Service Tax, Chennai – 2019 (2) TMI 1299 – CESTAT Chennai;

(iii) Commissioner of C. EX., Jallandhar Vs. Ambika Overseas – 2010 (7) TMI 330 – CESTAT, New Delhi;

(iv) Swami Construction Vs. CCE & ST – Vadodar-1 – 2022 (6) TMI 820 – CESTAT Ahmedabad.

6. Finally, it is submitted that the show cause notice dated 4.11.2019 has questioned the demand for the period from October 2014 to January 2017. Thus, the entire demand is beyond the normal limit prescribed under Section 11A of the Excise Act. Hence the show cause notice is barred by limitation. The confirmation of demand based on said show cause notice is not sustainable. Therefore, the order under challenge is liable to be set aside on this ground as well. The following decisions are relied upon:

(i) Commissioner, Central Excise and Customs and Anr. Vs. Reliance Industries Ltd. And Commissioner of Central Excise and Service Tax Vs. Reliance Industries Ltd. – 2023 (7) TMI 196 – Supreme Court;

(ii) Birla Corporation Limited Vs. Commissioner, CGST & Central Excise, Jabalpur (MP) – 2023 (3) TMI 1067 –CESTAT, New Delhi as affirmed by the Hon'ble Supreme Court in Commissioner of CGST and Central Excise, Jabalpur (MP) Vs. Birla Corporation Limited – 2023 (10) TMI 168 – SC Order

(iii) CC, CE & ST, Indore Vs. ZYG Pharma Pvt. Ltd. – 2017 (358) ELT 101 (MP);

(iv) Petropole India Ltd. Vs. CCE, Jaipur – 2016 (9) TMI 125 – CESTAT, New Delhi.

With these observations order under challenge dated 06.03.2023 is prayed to be set aside and appeal is prayed to be allowed.

7. Learned Departmental Representative while rebutting the submissions has reiterated the findings arrived at by Commissioner (Appeals) in the impugned order. It is an apparent and admitted fact on record that the address of location mentioned in the invoices are different from the location of the appellant. Hence the invoices are rightly denied to be a prescribed documents as per Rule 4(7) and Rule 9(2) of CCR, 2004 and Rule 4(A) of Service Tax Rules, 1994 Cenvat credit of Rs.16,12,208/- has rightly been denied and the reversal thereof has rightly been ordered. With respect to Cenvat credit of Rs. 32,95,447/- as has been availed on the basis of the challans, learned Departmental Representative mentioned that there is no relation of availment of input service tax credit of the

said amount on the basis of challans deposited against C&AG. Hence the said amount of Cenvat credit has also been rightly denied. Since both the discrepancies got revealed only during the audit and the appellant had otherwise suppressed the facts by wrongly availing the Cenvat credit thereby causing loss to the exchequer that the show cause notice has rightly invoked the extended period of limitation. Penalties have rightly been imposed. Impressing upon no infirmity in the order under challenge. The appeal is prayed to be dismissed.

8. Having heard the rival contentions and perusing the entire record and the decisions relied upon, we observe that two different amounts of Cenvat credit, as availed by the appellant have been denied by the department leading to two issues as follows:

(i) The denial of Cenvat credit of Rs. 16,12,208/- on the ground that the invoices issued by the input service providers are not the valid documents.

(ii) The denial of Cenvat credit of an amount of Rs. 32,95,447/- alleging that the challans deposited against C&AG report based whereupon the said Cenvat credit has been availed, are not the prescribed documents as per Rule 9(1)(bb) of CCR, 2004.

The issue wise findings are as under:-

Issue No. 1

9. The manufacturer of the goods or the provider of services are eligible to avail Cenvat credit in terms of Rule 3 of CCR, 2004, which provides that a manufacturer/service provider shall be allowed to take Cenvat credit of the central excise duty/service tax paid on any input or capital goods used by the manufacturer or any Input service received by the manufacturer/service provider. Admittedly there is no dispute on use of said input services in or in relation to manufacture of final product cleared by the appellant or in providing output service. Hence I hold that substantive right provided for in Rule 3 cannot be denied by resorting to procedural requirements prescribed under Rule 9, as has been done in the Instant case. It is Important to now peruse Rule 9 of the Credit Rules, which specifies the documents on basis of which credit can be taken. It reads as under:

RULE 9. Documents and accounts. - (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-

(a) an invoice issued by –

(i) a manufacturer or a service provider for clearance of- (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(ii) inputs or capital goods as such; (ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit:

From the above, it becomes clear that the name and address of the person receiving the taxable service is not a mandatory requirement. Secondly, I also find that even verification of documents has not been done by the original authority properly and on going through the invoice produced by the appellants before me, I find that full name and address of the service receiver, the nature of service provided, Registration No. of the service provider, amount of Service Tax paid for the service rendered and address of the issuer are available in the invoice. Further reference is also made to Rule 4A of the Service Tax Rules, which provides that any person who provides taxable service, on completion of the said service, shall issue an invoice or bill not later than thirty days from the date of completion of such taxable service or receipt of payment, whichever is earlier. The relevant extract is as under :

RULE 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. - (1) Every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description and value of taxable service provided or agreed to be provided;

and

(iv) the service tax payable thereon:

The above provisions says that, an invoice shall contain the following:

(i) Name, address and registration number of service provider;

(ii) Name and address of the person receiving the taxable service;

(iii) Description and value of taxable service provided; and

(iv) Service Tax payable. It is prescribed in the Credit Rules, that Cenvat credit shall be taken on the basis of an invoice issued.

10. Further Rule 9(2) provides that the Cenvat credit shall be allowed only when all the particulars are mentioned in the invoice issued by the service provider as per the Rules prescribed in this behalf. Thereafter, an exception is carved out in the said provision by mentioning that wherein if certain details, but not all, are provided in the invoice, credit shall still be allowed, if the Assistant/Deputy Commissioner is satisfied that the goods/services are received and accounted for in the books of accounts.

11. Thus it is clear that Cenvat credit cannot be denied merely on the ground that the documents does not contain all the particulars required to be contained in the invoice when there is no dispute regarding receipt of service. I draw my support from the judicial pronouncement in the case titled as *Kemwell Biopharma Pvt. Ltd. Versus Commr. of C.Ex. & ST, LTU, Bangalore* reported in [2017 (47) STR 70 (Tri.-Bang.)]. In this case, the Tribunal hold that mere non-mentioning of registration number of service provider on invoices is only a procedural lapse with regard to duty paying documents. In absence of any evidence of services not having been received or utilized, substantive benefit of credit, not deniable for such procedural lapse. I also rely upon the decision in the case of *Integra Software Services Pvt. Ltd. Versus Commr. of C. Ex., Puducherry* reported in [2017 (48) S.T.R. 137 (Tri. -Chennai)] wherein the Tribunal held that mere non-availability of registration details of service providers on invoice are nothing but procedural lapses and thus consequent refund of unutilized credit on export of services not deniable Also on the said decision of Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise & Customs, Vadodara-II Vs. Steelco Gujarat Ltd.*, wherein it has been categorically held that Cenvat credit cannot be denied on mere procedural irregularities.

12. Substantial benefit cannot be denied merely on account of procedural infractions in absence of any allegation with respect to eligibility of service as an input service and when substantive compliance laid down in the statute for availing the credit has been fulfilled particularly when there is no dispute as regards receipt of goods/services, payment of duty/tax or eligibility to take credit in respect of such goods/input services, denying the substantive benefit of availment of CENVAT Credit would be bad in law in this regard. Reliance on also

placed on the following decisions - Mardia Chemicals Ltd. vs. CCE (2003 (158) ELT 378 (T) Deepthi Insulated Cables Ltd vs. CCE [2000 (123) ELT 933(T). Krishna Cold Roller Section vs. Commissioner [1996 (88) ELT 98 (T) and Shriji Chemicals vs. Collector (1998 (98) ELT 375 (T)), wherein it has consistently been held that mere procedural infractions, technicalities and documentary infirmities cannot be the ground for denial of credit when there is substantial compliance of the procedure laid down by the statute. Although these decisions have been passed in respect of CENVAT credit on inputs, the ratio laid down therein would also be applicable in respect of availing CENVAT Credit on input services. It is an undisputed fact that services in terms of the alleged invalid documents are an eligible input service, being used for providing taxable output service and service tax has been paid on such input service. Accordingly, denial of credit is bad in law and not sustainable, when there is no allegation with respect to eligibility of such service as an input service.

13. Further reference is placed in the case of Integra Software Services Pvt. Ltd. Versus Commr. of C. Ex, Puducherry [2017 (48) S.T.R. 137 (Tri.-Chennai), the Tribunal in this case held that mere non-availability of registration details of service providers on invoice are nothing but procedural lapses and thus consequent refund of unutilized credit on export of services not deniable on aforesaid grounds. Substantial benefit cannot be denied merely on account of procedural infractions. In absence of any allegation with respect to eligibility of service as an input service and when substantive compliance laid down in the statute for availing the credit has been fulfilled particularly when there is dispute as regards receipt of goods/services, payment of duty/tax or eligibility to take credit in respect of such goods/input services, denying the substantive benefit of availment of CENVAT Credit would be bad in law.

14. In the present case also there is no dispute regarding receipt of input services as well as tax paid on such services. The only allegation is that the address is wrongly mentioned on the invoices. Admittedly, the appellant is Input Service Distributor. Resultantly, the substantive benefit of credit provided in Rule 3 of CCR cannot be denied by resorting to procedural requirements under Rule 4(7) and Rule 9(2) of CCR Rules. It is also an apparent fact on record that those suppliers had mentioned the incorrect address but once the said discrepancy was noticed the service providers rectified the mistake and issued the supplementary invoices by mentioning the correct address of the appellant. The supplementary invoices are also on record. It is held that Cenvat credit availed on such invoices has rightly been availed. I draw my support from the decision of this Tribunal in the case of Panacea Biotech Ltd. Vs. CCE, Delhi -1 - 2019 (1) TMI 1245 - CESTAT, New Delhi. In the light of this discussion, the order directing reversal of Cenvat credit of Rs. 16,12,208/- is therefore, held liable to be set aside.

Issue No. 2

15. The Cenvat credit of Rs. 32,95,447/- has been denied in reference to Rule 9(1)(bb) of CCR Rules alleging that the challans deposited against C&AG report

are not prescribed document under the said rule. I observe that apparently the entire liability of service tax was paid by the appellant under Reverse Charge Mechanism vide the said challans pursuant to C&AG audit report. The said challans evidencing the payment of service tax are enclosed on record. Once the payment of tax is made under RCM, it is Rule 9(1)(e) as shall be relevant.

16. Rule 9(1)(bb) of CCR which provides that Cenvat shall be taken by manufacturer/service provider/input service distributor on the basis of supplementary invoices/bill or challan issued by the provider of output service, except where the additional amount of tax be recovered from the provider of service on account of non-levy or non-payment or short levy or short payment by reason or fraud or collusion or suppression of facts with intent to evade the payment of service tax. On the other hand, Rule 9(1) (e) CCR provides that Cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, inter alia, on the basis of challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax. Perusal of both these provisions when read in light of the fact that the impugned amount of service tax was paid by the appellant under Reverse Charge Mechanism it becomes clear that Rule 9(1)(bb) shall not be applicable. I draw my support from the decision of this Tribunal in the case titled as Ineos Stryolution India Ltd. Vs. CCE & ST, Vadodara- 1 - 2022 (3) TMI 319 – CESTAT Ahmedabad. Thus, it is held that department has wrongly invoked Rule 9(1)(bb) while denying the Cenvat credit of Rs. 32,95,447/- confirmation of said demand is, therefore, liable to be set aside.

17. Coming to the plea of invocation of extended period of limitation; Admittedly the appellant has been regularly filing his returns mentioning the amount of Cenvat credit availed. There can be no possibility of any suppression as is alleged by the department. It is also an admitted fact that the service tax was duly been paid under forward or as well as under Reverse Charge Mechanism vis-à-vis issue No. (1) and issue No. (2) respectively. The question of any evasion of tax is, therefore, absolutely redundant. Above all apparently the issue No. (2) specifically is an issue arising out of interpretation of applicability of two rules of Service Tax Rule 9(1)(bb)/9(1)(e). It has already been held that the department is invoked the wrong rule since the tax on issue No. (2) has been paid under Reverse Charge Mechanism. I also observed that no evidence is produced by the department for proving any positive act of the appellant which may amount to suppression. We hold that there was no occasion to invoke the extended period of limitation. We draw our support from the decisions in case titled as GD Goenka Private Limited Vs. Commissioner of Central Goods and Service Tax reported as 2023 (9) TMI 717 – CESTAT New Delhi. Also from the decision in the case titled as Sarda Energy and Minerals Ltd. Vs. Commissioner of Central Excise (Appeals), Raipur reported in 2023 (7) TMI 631 – CESTAT New Delhi

18. In the light of entire above discussion, the impugned order is hereby set aside. Consequent thereto, the appeal is hereby allowed.

(Pronounced in open Court on 20/12/2024)