(2024) 05 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 51727 Of 2019

Segmental Consulting & Infrastructure Advisory Pvt Ltd — APPELLANT

Vs

Commissioner Of CGST & Central Excise-Delhi West — RESPONDENT

Date of Decision : 30-05-2024

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 9, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(g)

Citation : (2024) 05 CESTAT CK 0036

Hon'ble Judges : Dr. Rachna Gupta, Member (J);Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Rajesh Kumar Yadav, Rajeev Kapoor

Final Decision : Allowed

Judgement

Dr. Rachna Gupta, Member (J)

1. The present appeal has been filed to assail the Order-in-Original No. 68/2018-19/1234 dated 24.04.2019. The said order has adjudicated show cause notice dated 20.04.2018 as was served upon the appellants. The extended period of limitation has been invoked by the Department while issuing the show cause notice.

The details are as follows :-

Sl. No.

SCN No. & Date

Period

Amount involved

1

SCN dated 20.4.2018

2015-16 to 2016-17

Rs.2,22,20,243/-

2. The facts, in brief, are as follows : the appellants are engaged in providing the taxable services of "Consulting Engineer Service" (CES) to their major clients for providing consultation for road, bridges, tunnels etc. namely M/s Euro Studio, Spain, M/s Euro Studio, SL, Jammu & Kashmir and M/s NHAI, M/s Getinsa Ingeneria. Based on an intelligence gathered by the Department, the registered premises of appellant were searched, however, the premises were found to be the residential locked premises and their corporate office was found existing at Sector 49, Sohna Road Gurgaon, instead of being at their registered place in Paschim Vihar, New Delhi. The corporate office premises were also searched.

3. It was found that appellants were neither having central registration nor were registered under Service Tax. Both the addresses mentioned on the invoices submitted by the appellant were found to not to be registered premises of the appellant and thus were observed to be improper documents for availing Cenvat credit as prescribed under Cenvat Credit Rules, 2004. Based on these observations, earlier also two Show cause notices viz. No.17/2015 dated 03.12.2015 for the period 2010-11 to 2013- 14 was served Show cause notice for the period of 2014- 15 dated 18.4.2016 were also served upon the appellant. The present show cause notice is for the period 2015-16 and 2016-17 and thus a subsequent follow up show cause notice for the above two mentioned show cause notices. The information for the period in question was provided by the appellant vide their letters dated 15.2.2017, 10.11.2017 , 15.12.2017, 26.2.2018, 27.2.2018 and 14.3.2018. Perusing the said letters and the ST-3 returns of the appellants, department formed an opinion that service tax amounting to Rs.2,22,20,243/- for the taxable service provided in the year 2015-16 and 2016-17 is recoverable from the appellant. The said amount was proposed to be recovered vide Show cause notice No. 965/88/2015 dated 20.04.2018 along with the appropriate interest. The proportionate penalties were also proposed to be imposed. The said proposal has been confirmed vide order under challenge. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Shri Rajesh Kumar Yadav, learned counsel and Shri Vinod Kumar , learned consultant appearing for the appellant and Shri Rajeev Kapoor, learned authorised representative appearing for the respondent.

5. Learned counsel for the appellant has mentioned that both the show cause notices as have been mentioned in the impugned show cause notice have already been adjudicated by this Tribunal in Final Order No. 50857-50858/2023 dated 10.07.2023. The entire demand, on the same allegations and same observations has already been set aside. The department has not challenged these findings. The present show cause notice which admittedly is a follow up show cause notice, the issue involved herein therefore, stands no more res integra. The findings of the aforesaid Final Order are prayed to be followed in the present

show cause notice as well and the order under challenge may be set aside. The appeal is accordingly, prayed to be allowed.

6. Learned Departmental Representative appearing for the Department has acknowledged that the said Final order dated 10.07.2023 have been passed in appellant's own case and in their favour. It is also stated that the order has not been challenged by the department. However, it is submitted that the documents in the impugned show cause notice pertains to the financial year 2015-16 and 2016-17 whereas the said decision is passed on the documents of the financial year 2010-11 to 2013- 14. The decision in the present case is based on the documents filed by the appellant pursuant to the impugned show cause notice which were different from the documents pertaining to the previous both the show cause notices. No infirmity, however is impressed upon in the impugned order under challenge. Therefore, the impugned order-in-original is prayed to be upheld and appeal is prayed to be dismissed.

7. Having heard both the parties and perusing the records of the present appeal and the Final Order No. 50857-50858/2023 dated 10.7.2023, we observe that the issue involved in the previous appeal as well as in the present appeal are same, which are :

(i) Whether the appellant is liable to pay service tax on Consulting Engineer Services rendered by the appellant;

(ii) Whether the appellants have wrongly availed the Cenvat credit without support of input documents and, as such, the same is recoverable from the appellants.

(iii) Where the extended period of limitation has wrongly been invoked while issuing the show cause notice.

8. Three of these issues have already been adjudicated in the said Final Order. We peruse that the findings are not such as may be distinguished based upon the service tax returns filed in different financial years. The findings of the said order are opined to be squarely applicable to the facts of the present case.

9. In the present case also appellants have provided Consulting Engineering services in the State of Jammu and Karnataka. Such services with respect to the construction of roads in Jammu and Kashmir cannot be intangible nature.

The service circular No. 14/2004 dated 28.04.2004 has clarified that Service Tax is not applicable to the service provided in the State of Jammu and Kashmir irrespective of the service provider is not from the said State. Otherwise also Mega Notification No. 25/2012 dated 20.06.2012 exempts certain services from the whole of service tax leviable thereupon Clause 13 (a) of the said Notification is with respect to the service provided by way of construction, erection, commissioning, installation completion, fitting out, repair, maintenance, renovation or alteration of a road bridge, tunnel or terminals for road transportation for use by general public. In the present case, admittedly the services provided by the appellants are towards the constructions of a road meant for use by the general public. The service tax liability is held to have been wrongly fastened. The detailed reasons given in the Final order dated 10.07.2023 are adopted to arrive at these findings.

10. With respect to the allegations of improper documents/ invoices for availing the Cenvat credit, we follow the proviso to Rule 9 of Cenvat Credit Rules, 2004. The proviso clarifies that in case all the particular mentioned in clause (a) to (g) of Rule 9 of Cenvat Credit Rules, 2004 are otherwise available on the documents, and submitted same is sufficient for availment of Cenvat Credit as per clause 9(f). An invoice / bill or challan issued by the provider of input service is a relevant document. Proviso (2) reveals that "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. All these particulars are contained in the documents provided by appellant for availing credit.

11. The invoice has not been considered by the department while issuing the show cause notice as well as by the adjudicating authority for the sole reason that the appellant was not find existing at the address which is mentioned in the invoice. From the appellant's letter given to the department, it is very much apparent on record that the appellant was shifting the office premises. Hence, it is not a case of obtaining fake registration at false address. Otherwise also, the objection about the address of an existing registered service provider is nothing but a procedural lapse. Substantial benefit of availing of Cenvat credit could not have been denied on the grounds of procedural lapse. Resultantly, we hold that the Cenvat credit was rightly availed by the appellant based on invoices. With respect to invocation of extended period, we observe that admittedly the appellant was filing regular ST-3 returns The department cannot allege suppression of facts with an intent to evade tax was to be produced by the department. But same has not been produced.

Relying upon the decision of Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture vs Commissioner of Central Excise, Chandigarh reported as [2007 (216) ELT 177 (SC)], we hold that extended period has wrongly been invoked.

11. In the light of entire above discussions, we hold that issue is no more res integra and stand already decided by this Bench in its Final Order No. 50857-50858/2023 dated 10.07.2023. The appellant is held not liable for any service tax liability as is alleged. Cenvat Credit availed is held as proportionately availed. The demand is held to have been hit by bar of limitation. The findings in the Order-in-Original as has been challenged in the present appeal are contrary, hence the said order is hereby set aside. Consequent thereto, the appeal is hereby allowed.

