
(2023) 11 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10653 Of 2014

Vidyut Corporation

APPELLANT

Vs

C.C.E. & S.T.-Daman

RESPONDENT

Date of Decision : 01-11-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 9, 25

Citation : (2023) 11 CESTAT CK 0006

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : B.K Singh, Vandana Singh, Anoop Kumar Mudvel

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The brief facts of the case are that the appellant was granted registration Certificate No AAAPV7328JXM001 dated 27.02.2003 under provision of Rule 9 read with Notification No. 35/2001-CE (NT) dated 26.06.2001. The said registration was surrendered on 24.03.2004 to the Deputy Commissioner of Central Excise Division North Daman as the unit at Survey No 481/3B Somnath, Dabhel, Nani Daman was devastated by fire. The appellant requested deputy Commissioner to accept surrender of registration thereafter the appellant was granted another registration certificate No AAAPV328JXM002 on 26.03.2008 for manufacturing the excisable goods in the premises Survey No 482/15 Somnath, Dabhel, Daman. After obtaining new registration, the new unit opened at Survey No. 482/15 Daman. They started business of the same electrical goods as so done in the first survey no 481/3B. During the period 05.03.2011 to 05.09.2011, the appellant inadvertently paid the duty on clearances of the goods under assessee code No. AAAPV328JXM001. The appellant vide letter dated 08.11.2011 made a request to the Jurisdictional Assistant Commissioner for changing Central Excise Registration No. in the payment made under wrong (previous assessee code) assessee code in Form ER-1 against those payments the correct registration

no. and address has been clearly mentioned. The appellant thereafter received an email dated 05.01.2012 from the departmental Superintendent, IC EASIEST DGS SZ Chennai informing that although when the manual payments were being made it was possible to rectify any errors manually. However, with electronic filing, such corrections were not possible manually. Thereafter, a show cause notice dated 07.03.2012 was issued to the appellant demanding duty of Rs. 98,40,743/- which stands paid by the appellant against the previous registration number. The Adjudicating Authority in the impugned order in original confirmed the demand interest and also imposed penalty of Rs. 50 Lacs under Rule 25 of the Central Excise Rules, 2002. Therefore, the present appeal filed by the appellant.

2. Shri B. K Singh, Learned Counsel along with Ms. Vandana Singh appearing for the Appellant submits that in any case even show cause notice ought not to have been issued as it is admitted fact that the appellant have deposited the demand even though under wrong registration number which was otherwise surrendered and the same was accepted by the department. For small inadvertent mistake the duty cannot be demanded twice. He submits that the appellant after committing such mistake approached the department for rectification of error, the department has issued a show cause notice and confirmed the demand.

2.1 He submits that on the identical fact this Tribunal in the case of Sahara India TV – 2016 (1) STR 155 (Tri. Del) clearly held that in absence of any malafide when mistake was brought to the to the department by the appellant, there has not been any short or delayed payment of service tax and the Tribunal has directed the revenue to rectify the mistake and set aside penalty and interest. He also placed reliance on the following judgments:-

- Sahara India TV Netwrok - 2016 (41) STR 145 (Tri. Del)
- Devang Paper Mills Pvt Ltd – 2016 (41) STR 418 (Guj.)
- M/s. Neyveli Lignite Corporation Ltd – 2018 –TIOL- 1254-CESTAT-MAD

3. Shri Anoop Kumar Mudvel, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the only mistake that inadvertently happened on the part of the appellant is that they have mentioned wrong registration while making the payment of excise duty. Therefore, except such mistake there is not a case of non-payment of duty, hence, the demand of duty cannot be sustained. Consecutively, the demand of interest and imposition of penalty shall also not sustain. We find that the appellant had a bona fide view that the department have rectified the mistake occurred during the payment of excise duty under wrong registration number therefore, the revenue instead of issuing the show cause notice should have carried out the rectification in their record and closed the matter. It is also a fact on record that the old registration number which was

wrongly mentioned in the challan for excise duty payment was surrendered by the appellant to the department and such surrender was accepted by the department, in such situation even the payment made by the appellant should not have been accepted on the system itself. Therefore, we find that it is not a mistake of the appellant only but equally it is a system fault of the department for which the appellant should not be made to suffer. The absolutely same situation involving the same issue has been considered by this Tribunal in the case of Sahara (Supra) wherein the Tribunal has passed the following order :-

"6. We have considered the contentions of both sides. We find that in the case of K.K. Kedia (supra) CESTAT, in effect, has held that such adjustment can be permitted while in the case of Plasticemix Industries (supra) such adjustment is held to be not permissible on the ground that there is no provision for that in the Service Tax law. It is evident from the facts of the case narrated that the legal person for both the registrations (one for NOIDA unit and other for Mumbai unit) is the same. Further, it is evident that it is simply a case of wrong Service Tax registration number having been mentioned in the Service Tax deposit challan. In this case the wrong registration number happens to be of the appellant itself though belonging to its different unit. It could as well have been that by mistake the registration number of a different assessee was mentioned in which case it could not have been asserted that Service Tax was deposited in the account of that assessee whose registration number was wrongly mentioned in the challan (though its name did not appear therein) and not in the account of the person whose name was mentioned in the challan. Such mistakes can happen and it can scarcely be anybody's case that such mistakes are beyond rectification. In this case, the Assistant Commissioner, Service Tax in-charge of the appellant's Mumbai unit has categorically mentioned that the impugned amount of service tax (Rs. 25 lakhs) deposited has not been utilised towards paying service tax by the Bombay unit. The CESTAT judgment in the case of Plasticemix Industries (supra) makes a summary observation that there is no provision under the present service tax law for adjustment of service tax payments from the account of one registered unit to the account of another registered unit. It however does not say that there is any provision in the service tax law which prohibits such adjustment. Further, as stated earlier, the issue is not so much of law but of a mistake of incorrectly mentioning the registration number in the service tax deposit challan. That such mistakes do happen is also evident from the fact that Commissionerate of Cochin issued a Trade Notice No. 3/2014-S.T., dated 10-7-2014, the relevant part of which reads as under : -

"Subject : Ratification of remittances made against wrong accounting code and or wrong STC Code/C. Ex. Registration Number - Procedure - Regarding.

There has been number of representations from registered service providers/receivers and Central excise assessees for rectification of mistakes occurred during remittances of service tax or Central excise duty against wrong accounting head and/or incorrect registration numbers.

The Central Board of Excise & Customs vide S.T. Circular No. 58/7/2003 (F.No. 157/2/2003 Cx. A), dated 20-5-2003 has clarified that in such instances the matter should be sorted out with the P.A.O. and the assessee need not be asked to pay Service Tax again. The transfer entries has to be effected by the PAO, as per Pr. Chief Controller of Accounts, New Delhi's letter No. Coord/2(1)/76/e-PAO (Chennai)/13-14/159, dated 4-9-2013 and the Civil Accounts Manual of the PAO, read with letter Chord/2(8)/Cex/13-14/224, dated 1-5-2014, even for previous years.

The instances, resulting in remittances against wrong Head of accounts/STC numbers/C. Ex. Registration number, are cited below : -

1. Service Tax has been paid in the wrong accounting code of a difference service than which is rendered, where the mistake has occurred under same registration number.
2. Service Tax has been paid against incorrect Accounting Minor Heads of Education Cess, interest, penalty Secondary Higher Education Cess and or vice versa. For eg : interest paid under Secondary Higher Education Cess, etc.
3. Service Tax has been paid against the STC number of another assessee/same assessee's (having multiple registrations) different registration number.
4. Service Tax has been paid against Central Excise Registration number of the assessee instead of Service Tax Code Number or vice versa (major heads- Customs-037, Central Excise-038 and Service Tax-044).
5. Service Tax has been paid against cancelled/surrendered registrations on obtaining centralized registration.

In such instances, in order to ensure uniformity and to avoid hardships to the assessees, the following procedure is prescribed to be followed by the assessee and the field formations.

Case 1. The assessee should represent (Through Range and Division) to the Commissioner of Central Excise and Service Tax, describing the mistake occurred/ reasons for such errors along with certified copies of the remittance challans, ST-3 Returns for the relevant period and any other document pertains to the issue to establish the genuine mistake and to ratify the error.

Case 2. Same as above.

Case 3. The assessee should obtain a no objection Certificate from the assessee or any other person against whose registration number to which the wrong remittances have been made by e-payment to transfer the amount from their registration number, certified by the concerned Range Officer of Central Excise/ Service Tax that the said amount has not been utilized or paid by him and does not surface in his ledger (Books of accounts) and attach with the representation besides the documents enumerated against Case I above."

As may be observed, para No. '3' and para No. 'Case-3' of the said Trade Note squarely cover the situation obtaining in the present case and lay down a procedure for rectification of such mistake.

7. In the present case, there is complete absence of mala fide and the mistake was brought to the notice of Revenue by the appellant itself. In effect, essentially, overall there has not been any short or delayed payment of service tax by appellant. In these circumstances, the question of penalties would not arise. In these circumstances, even the question of interest would not arise in the wake of C.B.E. & C. Circular dated 20-5-2013 cited above. We are of the view that the procedure prescribed by the Cochin Commissionerate in its Trade Notice dated 10-7-2014 is reasonable for the purpose of rectification of such mistakes without any risk to Revenue.

8. In the light of the foregoing discussion, we set aside the impugned order, allow the appeal and remand the case to the primary adjudicating authority with the direction that the necessary adjustment of the impugned amount of Rs. 25 lakhs be done in accordance with the procedure prescribed in the Cochin Commissionerate Trade Notice dated 10-7-2014 cited above."

5. Considering the above discussion and finding supported with the aforesaid decision, the demand of duty which was already paid and corresponding interest and penalties are not sustainable. Hence, the impugned order is set aside. Appeal is allowed. Revenue is at liberty to make necessary corrections in their records.