(2016) 06 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 53952 Of 2014

Vodafone Essar Mobile Services Ltd. APPELLANT

Vs

C.S.T., Delhi III RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 15, 15(4), 15(2)
Finance Act, 1994 — Section 77, 78, 80

Citation : (2016) 06 CESTAT CK 0004

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Rachit Jain, Govind Dixit, Ranjan Khanna

Final Decision : Allowed

Judgement

1. This appeal is directed against the impugned order dated 31.3.2014 passed by the Commissioner, Central Excise, Delhi III, wherein Cenvat credit

demand of Rs.30,05,373/- was confirmed along with interest and equal amount of penalty was imposed under Rule 15(4)/15(2) of the Cenvat Credit

Rules, 2004, read with Section 78 of the Finance Act, 1994. Besides, further penalty of Rs.20,000/- was also imposed under Section 77 of the said

Act. The reason for confirmation of the service tax demand is that credit taken on various inputs, input services and capital goods are not confirming

to the definitions contained in the Cenvat Credit Rules, 2004.

2. Shri Rachit Jain, ld. Advocate appearing on behalf of the appellant fairly concedes that so far as eligibility of cenvat credit on the disputed

goods/services is concerned, the issue is settled by the Larger Bench of this Tribunal in the case of Tower Vision India Pvt. Ltd. vs. C.C.E., Delhi

reported in 2016 â?" TIOL â?" 539 â?" CESTAT â?" DEL â?" LB. However, the appellant is contesting imposition of penalty under Section 78 of the

Finance Act, 1994 which is not proper and justified, in view of the fact that there is no suppression of facts/misstatement, fraud on the part of the

appellant. To support the above stand, ld Advocate relies on the decision of the Honâ??ble Supreme Court in the case of Nizam Sugar Factory vs.

C.C.E., A.P. reprted in 2006 (197) ELT 465 (SC) and also the decision of the Tribunal in the case of Idea Mobile Communication Ltd. reported in

2015 â?" TIOL â?" 3025 â?" DEL.

3. On the other hand, Shri Govind Dixit, ld. A.R. appearing for Revenue submits that though the cenvat credit demand confirmed in the adjudication

order is within limitation period, but for the purpose of suppression of facts , provision of Section 78 can be invoked for imposition of penalty.

4. Heard both sides and perused records.

5. So far as availment of cenvat credit on the disputed goods/ services are concerned, the issue is squarely covered by the decision of the Larger

Bench of this Tribunal in Tower Vision India Pvt. Ltd. (supra), wherein it has been held that the goods/services in question shall not be considered as

input, capital goods or input services for the purpose of availment of cenvat credit. Thus respectfully following the decision of the Larger Bench of this

Tribunal, I conclude that there is no infirmity in the impugned order passed by the ld. Commissioner of Central Excise, with regard to confirmation of

cenvat credit demand.

6. However, with regard to imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994, I am

of the view that the said provisions of the statute cannot be invoked in the circumstances of the present case, as there is no element of suppression,

misstatement of facts, fraud etc. on the part of the appellant to defraud the Government revenue. Further, there is also no specific findings recorded in

the impugned order as to involvement of the appellant in fraudulent activity with intent to avail irregular cenvat credit on the disputed goods/services.

Admissibility of cenvat credit in the circumstances of the present case, was contentious one, which was finally resolved in the case of Tower Vision

India Pvt. Ltd (supra). Therefore, suppression of fact cannot be invoked, justifying imposition of penalty under Section 78 of the Act. On perusal of

the documents, I find that availment of cenvat credit on the disputed goods/

services was attributable to the bonafide belief that the same are eligible

for cenvat either, as inputs, input service or capital goods . In view of contrary decision of various judicial forums, Section 80 of the Act, in the present

case, can be invoked for waver of penalties imposed under Section 77 and 78 of the Act ibid.

5. In view of the foregoing, the impugned order is confirmed to the extent of disallowance of cenvat credit of Rs.30,05,373/-. Imposition of penalty

under Section 77 and 78 of the Act are set aside.

6. The appeal is disposed of in above terms.