CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30365 of 2023

(Arising out of **Order-in-Appeal** No.HYD-SVTAX-SC-AP2-172-22-23-ST, dated 28.03.2023 passed by Commissioner of GST & Central Tax, Hyderabad Appeals-II)

Electronics Corporation of India Ltd., .. **APPELLANT**
Post – ECIL,
Cherlapally,
Hyderabad,
Telangana – 500 062.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Secunderabad – GST
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri P V B Chary, Advocate for the Appellant.

Shri Pradeep Saxena & Shri V Srinkanth Rao, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. A/30028/2024

Date of Hearing:12.01.2024
Date of Decision:12.01.2024

[ORDER PER: ANIL CHOUDHARY]

The issue in this appeal is whether Cenvat Credit of Rs. 2,50,394/- have been rightly disallowed.

2. The appellant is a Public Sector Undertaking under Department of Atomic Energy, Government of India. It mostly supplies to Defence and other government establishments. Its registered and head office is at Hyderabad and branch offices in other states with separate service tax registration.

3. Initially, show cause notice was issued dated 07.12.2020 proposing disallowance with respect to 47 invoices / bills to the Branch office of appellant at New Delhi and not on appellant factory at Hyderabad. Total Rs. 48,40,844/- credit taken during the period 2016-17 and 2017-18 (upto June 2017). In the first round, the Commissioner (Appeals) allowed Cenvat

Credit with respect to other invoices, except for only 1 invoice issued by M/s ASIS Equipment (P) Ltd., for Rs. 2,50,394/- dated 01.08.2015.

4. Being aggrieved, the appellant is before this Tribunal.

5. Learned Counsel for the appellant assailing the disallowance states that M/s ASIS Equipment (P) Ltd., was entrusted with the work of collection of dues from M/s M P Laghu Udyog Ltd., on commission basis. The service provider had after collection of the pending dues had billed the appellant for provision of service and raised the tax invoice. Accordingly, the appellant have undoubtedly received the input service. Further, the disallowance is bad as is evident from the copy of invoice dated 01.08.2015 issued by ASIS Equipment Pvt Ltd., which clearly describes the nature of service as – commission charges for client for MPLUNL Bhopal, at the rate of 9.5% on the amount collected and they have charged the service tax accordingly of Rs. 2,34,399/-. It appears that the Court below have missed the invoice, and have relied the annexure to the invoice prepared by the service provider, giving the name of the party from whom collection has been done which appears to be a working sheet for their internal purpose and which gives the details of the service. Accordingly, he prays for allowing the appeal with consequential benefits. He also urges the show cause notice is also bad and barred by limitation.

6. Learned AR relied on the impugned order. Having considered the rival contentions, I find that the invoice dated 01.08.2015 has been issued in the name of the appellant, clearly mentioning the nature of the service as well as the amount charged for their service along with service tax. I further find that there is no dispute with regard to the receipt of service.

7. In this view of the matter, the appeal is allowed on merits and it is held that the appellant is allowed Cenvat Credit of the balance of Rs. 2,54,399/-. Accordingly, the impugned order stands modified and the appeal is allowed with consequential benefits. The ground of limitation is left open.

(Operative part of this Order was pronounced
in court on conclusion of the hearing)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

jaya