

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70317 of 2018

(Arising out of Order-in-Original No.06/Commissioner/(AUDIT) NOIDA/17-18 dated 12.01.2018 passed by Commissioner (Audit) CGST, Noida)

M/s Dish TV India Ltd.,
(FC-19, Sector-16A, Noida
Distt.-Gautam Buddha Nagar U.P.)

.....Appellant

VERSUS

Commissioner of CGST, Noida
(CGO Complex-II, Kamla Nehru Nagar
Near Hapur Chungi Ghaziabad)

....Respondent

APPEARANCE:

Shri A. R. Madhav Rao, Advocate, Shri Tushar Joshi, Advocate, Shri Mukunda Rao, Advocate & Shri Nishant Mishra, Advocate for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.- 70261/2024

DATE OF HEARING : 06 May, 2024
DATE OF DECISION : 06 May, 2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.06/Commissioner/(AUDIT) NOIDA/17-18 date 12.01.2018 passed by Commissioner (Audit) CGST, Noida. By the impugned order following have been held:-

ORDER

- (a) *I order to demand and recover interest amount of Rs.6,30,94,154/- (Rs. Six Crore Thirty Lakh Ninety Four Thousand One Hundred Fifty Four only) from M/s Dish TV India Limited, FC-19, Sector-16A, Noida, Distt. Gautam Buddha Nagar (U.P.) under Rule 14 of the*

CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994. Out of the total demand of interest of Rs.12,39,38,369/- I drop the rest of the demand of Rs.6,08,44,215/-.

- (b) *I also impose a penalty of Rs.5,000/- (Rs. Five Thousand only) under Rule 15A of CENVAT Credit Rules, 2004 for contravention of Rule 4(2)(a) of CENVAT Credit Rules, 2004.*
- (c) *I set aside the demand of Rs.14,03,43,252/- (Rs. Fourteen Crore, Three Lacs, Forty Three thousand and Two Hundred Fifty two only).*

The adjudged dues are ordered to be paid forthwith."

2.1 The Appellant is engaged in providing output services under the category of Broadcasting Services. He is availing the facility of Cenvat credit.

2.2 During the course of the audit it was observed that the Appellant has been taking credit on the Set Top Boxes provided by them to their customers for receiving the signals and credit was taken by the Appellant treating them as input. It was observed that these goods being classifiable under Chapter 85 were covered by the definition of capital goods and thus the act of taking 100% credit immediately on the receipt of the said goods was not proper and only 50% of credit should have been taken during that financial year and next 50% should have been gone to the next financial year.

2.3 Show cause notice dated 30.03.2013 was issued to the Appellant asking them to show cause as to why the:-

- i. *Interest Rs.12,29,38,369/- (Twelve Crores Twenty Nine Lacs Thirty Eight Thousand Three Hundred Sixty Nine only) on the excess credit taken on CPE's should not be demanded from them under Rules 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.*
- ii. *An amount Rs.14,03,43,252/- (Rs. Fourteen Crores Three Lacs Forty Three Thousand Two Hundred Fifty Two only) should not demanded under Rule 14 of CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994.*

- iii. *Interest on the said amount should not be demanded from them under Rules 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.*
- iv. *Penalty should not be imposed under the provision of Rule 15 of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.*

2.3 The show cause notice has been adjudicated as per the impugned order.

2.4 Aggrieved Appellant has filed this appeal.

3.1 We have heard Shri A. R. Madhav Rao, Shri Tushar Joshi, Shri Mukunda Rao & Shri Nishant Mishra Advocates for the Appellant and Shri Santosh Kumar Authorized Representative for the Revenue.

3.2 Arguing for the Appellant, learned counsel submits that

- the Appellant has taken credit on the set top boxes by treating them as input as there is no restriction in the definition as per Rule 2 (k) of Cenvat Credit Rules, 2004, which excludes these from the definition of inputs;
- these set top boxes have been used by the Appellant for providing the output services and hence correctly covered under the said definition.
- the same goods may be input or capital goods depending upon the nature of their uses by the person and it is settled principal where two benefits are available subject to satisfying the condition precedent, the Appellant is free to avail either, which is more beneficial,-
 - Share Medical Care [2007 (209) E.L.T. 321 (S.C.)]
- The definition of inputs is wide enough to cover these set-top boxes under that category. Reliance placed on following decisions:-
 - Banco Products (India) Ltd. [2009 (235) E.L.T. 636 (Tri.-LB)];
 - Zenith Papers [2002 (146) E.L.T. 518 (P & H)];
 - Harcharan & Brothers [2002 (149) E.L.T. 73 (P & H)];
 - Modi Rubber [2000 (119) E.L.T. 197}

- The Department wants to put these goods under the category of capital goods only for the reason that these goods have been capitalized in their book of accounts, and depreciation claimed for the purpose of income tax. It is a settled preposition in law that accounting practices should not govern the interpretation of legal provisions. Reliance placed on the decisions as follows:
 - Ingersoll Rand (India) Ltd. [2014 (300) E.L.T. 347 (Guj)]
 - Tuticorin Alkali Chemicals and Fertilizers [1996 (227) I.T.R. 172 (SC)]
 - Shakti Finance [2013 (258) C.T.R. 433 (Mad)]
- The demand for interest could not have been there when the credit taken was not utilized as held in following cases,-
 - Bill Forge Pvt. Ltd. [2012 (26) S.T.R. 204 (Kar)]
 - Jaypee Greens [2020 (33) G.S.T.L. 109 (T-All)]
- the demand is barred by limitation as extended period of limitation is not available for the reason that
 - issue is in the nature of the interpretation of statutory provisions. Legal opinion was taken by the Appellant from the office of LakshmiKumaran & Shridharan and on the basis of the said opinion credit was taken treating thee set top boxes as inputs;
 - the issue was well in the knowledge of the department as evident from the audit report dated 15.05.2009.
- Reliance placed on the following decisions to support the preposition that demand is barred by limitation,-
 - Hindustan Insecticides Ltd. [2013 (297) E.L.T. 332 (Del.)];
 - Kwality ICE Cream Company [2012 (281) E.L.T. 507 (Del.)];
 - T.V.S. Whirpool Ltd. [2000 (119) E.L.T. A177 (S.C.)].

- As demand for interest is barred by limitation and not sustainable on merits appeal be allowed.

3.3 Arguing for the Revenue learned A.R. reiterates the findings of the impugned order.

4.1 We have considered the impugned order along with submissions made in appeal and during the course of argument.

4.2 It is evident from the impugned order that demand of Rs.14,03,43,252/- in respect of inadmissible credit has been dropped by the adjudicating authority. Demand of interest has been modified from Rs.12,29,38,369/- to Rs.6,30,94,154/-. Thus we are now concerned only with the demand of interest made by the adjudicating authority by holding that these set-top boxes are not inputs but capital goods. For confirming this demand impugned order records the following findings:

"5.7 In terms of Rule 2 of the CCR, Capital goods has been defined as :

(a) "capital goods", means:-

(A) the following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No.68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank, used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

5.8 The definition of Capital Goods, as it stood prior to 01.04.2011 had a very wide scope and it covered all the goods falling under Chapter 82, Chapter 84, Chapter 85, and

Chapter 90. I find that the STBs (Set Top Boxes) as well as other CPEs procured by the party were being utilized by them for transmission and broadcasting the contents of various channels and, therefore, they cannot be categorized as inputs. STBs are broadly classified under the Chapter 85176960 as Set Top Boxes for gaining access to internet and this Sub-heading 8517 6960 is included under Chapter 85 of the Central Tariff Act, 1985, hence, covered under the definition of capital goods. In this regard it is pertinent to mention that the usage of the STBs is in the form of mechanical device for further enhancement of the transmission to the customers and it cannot be construed as an input as claimed by the party.

5.9 During the course of Audit, it was revealed that the party had booked the CPEs as 'Capital Revenue Expenditure' and availed of the benefit of depreciation on the CPEs as Capital Goods. As such it is evident that the party was treating the CPEs as Capital Goods for the purpose of availment of depreciation from their book balance.

insert para 5.10, 5.11, 5.12, 5.13 & 5.14 from OIO"

4.3 The issue involved in the present appeal is in a very narrow compass. The definition of "input" as at the relevant time has per Rule 2 (k) of the CENVAT Credit Rules, 2004 is reproduced below:–

"(k) "input" means:

(i) All goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;"

Explanation 1. – *The light diesel oil, high speed diesel oil, or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.*

Explanation 2. – *Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer [but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods];*

4.4 As the Appellant is a provider of an output service we are concerned with (ii) of the definition of "input" as above. From the definition it is evident that input has been defined for an output service provider input has been defined to mean goods used for providing any output services except certain goods which have been specifically excluded.

4.5 Set top boxes classifiable under Chapter 85 do not find any mention in the exclusion category. That being so, we do not find any reason why these goods could not have been treated as input for provision of the output services by the Appellant. It is a well settled principle in the law that the taxing statute needs to be construed strictly according to the words phrases used in the statute; there can be no other interpretation when literal interpretation is unambiguous. Such a proposition flows from the following cases:-

A. Sneh Enterprises [2006 (202) E.L.T. 7 (S.C.)].

"25. While dealing with a taxing provision, the principle of 'Strict Interpretation' should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are

possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue."

B. Acer India [2007 (218) E.L.T. 17 (S.C.)];

"21. Furthermore, the Computers (Additional Duty) Rules, 2004 is a taxing statute. It required to be construed strictly. [See Manish Maheshwari v. Asstt. Commissioner of Income Tax and Anr., 2007 (3) SCALE 627 and Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors., 2007 (7) SCALE 392]. So construed, we are of the opinion, that the interpretation by the Tribunal is in consonance with the aforementioned rules of interpretation."

C. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]

"19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannekwa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship

and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

21. *In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.*

22. *At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the Courts sometimes have made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals case (Infra para 37).], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.*

23. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher Courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under :

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. - Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. - Also termed as close interpretation; interpretatio restrictive.

See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.' William M. Lile et al., *Brief Making and the use of Law Books* 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond, *Jurisprudence* 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

24. *As contended by Ms. Pinky Anand, Learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation. The decision of this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors., (1990) 3 SCC 682, made the said distinction, and explained the literal rule-*

"The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict - literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with literal rule' would result in ignoring an important aspect that is 'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.

25. *We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may*

reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute."

D. VVF India Ltd. vs. State of Maharashtra 2023 CENTAX 421 (S.C);

"11. Justice Bhagwati in A.V Fernandez v. State of Kerala AIR 1957 SC 657, writing for a Constitution Bench, elucidated the principle of strict interpretation in construing a taxing statute as follows:

"29. In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter."

4.6 These set top boxes satisfy the definition of inputs as they are goods used by the output service provider for the provision of the output services. There cannot be any fallacy in the stands taken by the Appellant in taking the entire credit at the time of receipt of these set top boxes as inputs.

4.7 There is no dispute that Cenvat credit is admissible to the Appellant. Revenue's only dispute is with regards to the admissibility under capital goods for any inputs and that too on the basis of accountancy practices followed by the Appellant. We do not find any merits in the argument that just because these goods have been capitalized in the books of accounts, they could not have been treated as input. In the case of Tuticorin Alkali Chemicals & fertilizers Ltd. [[1997] 6 SCC 117] Hon'ble Supreme Court has observed as follows:

"29.It is true that this Court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override Section 56 or any other provision of the Act. As was pointed out by Lord Russell in the case of B.S.C. Footwear Ltd, the Income Tax law does not march step by step in the footprints of the accountancy profession."

4.8 In view of the discussions as above we do not find any merits in the demand of interest made. As we do not find any merits in the demand made, we are not going into the issue of limitation and other issues raised by the Appellant in this appeal.

5.1 Appeal allowed.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS