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

REGIONAL BENCH – COURT NO.I

**Service Tax Appeal No.71149 of 2018**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1927-1936-17-18 dated 26/03/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

**M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.** **.....Appellant**

Windsor IT Park, Tower-A

Ground & First Floor,

A-1 Sector-125, Noida

*VERSUS*

**Commissioner of Central GST,** **.....Respondent**

Noida Commissionerate

WITH

(i) Service Tax Appeal No.71150 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (ii) Service Tax Appeal No.71151 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (iii) Service Tax Appeal No.71152 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (iv) Service Tax Appeal No.71153 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (v) Service Tax Appeal No.71154 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (vi) Service Tax Appeal No.71155 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (vii) Service Tax Appeal No.71156 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (viii) Service Tax Appeal No.71157 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.); (ix) Service Tax Appeal No.71158 of 2018 (M/s Emerson Process Management Power and Water Solutions India Pvt. Ltd.);

**APPEARANCE:**

Absent On Call, for Appellant
Shri Rajeev Ranjan, Authorized Representative for Respondent

**CORAM :**
**Hon'ble MR. ARCHANA WADHWA, MEMBER (JUDICIAL)**

DATE OF HEARING : 11.03.2019
DATE OF DECISION : 11.04.2019

FINAL ORDER NO. **70778-70787 / 2019**

**ARCHANA WADHWA**

All the appeals are being disposed of by a common order as the issue involved is identical and all the appeals are arising out of the same impugned order of Commissioner (Appeals). Nobody appeared for the appellant. Accordingly, I have heard learned A.R. and have gone through the impugned orders.

2. As per facts on record, the appellant is engaged in the business of providing services of 'Information Technology, Software Services, Consulting Engineer, Maintenance or Repair Services and Management Consultants Services and is duly registered with the Service Tax Department. The dispute in the present appeal relates to refund claims of unutilized Cenvat Credit in terms of provisions of Rule 5 of the Cenvat Credit Rules, 2004, which allows refund of the unutilized credit involved on input services used for providing export services. The said refund claim stand primarily rejected by the Lower Authorities on the ground of time bar. It stands observed by the Authorities below that the same stand filed beyond the period of limitation from the relevant date. The relevant date has been adopted by the Lower Authorities as the date of export. On the other hand it is appellant's contention that the relevant date should be taken as date on which the consideration for export services was received in India. For the said purpose they have relied upon the Tribunal's decision in the case of

M/s Bechtel India Pvt. Ltd. V/s CCE Delhi reported as 2014 (34) STR 437 (Tri.-Del.) whereby it was held that in case of export of service the export is complete when foreign exchange is received in India and therefore, relevant date is date of receipt of foreign exchange. To the same effect is another decision of the Tribunal in the case of Commissioner of GST, Mumbai Central V/s Everstone Capital Advisory Pvt. Ltd. reported at 2018 (12) G.S.T.L. 328 (Tri.-Mumbai) wherein it was held that relevant date for computation of one year period of limitation for filing claim is the date of receipt of foreign exchange ant not the date of export of services. The same view stand upheld in the case of Commissioner of Service Tax, Goa V/s Ratio Pharma India Pvt. Ltd. reported as 2015 (39) STR 31 (Triibunal-LB.).

3. I find that though the above decisions were placed before the Commissioner (Appeals) but the same did not stand considered by him for the reasons best known to him. The issue is no more res-integra and stands settled by the Larger Bench decision in the case of Commissioner of Service Tax, Goa V/s Ratio Pharma Inida Pvt. Ltd. reported as 2015 (39) STR 31 (Tribunal-LB.) laying down that relevant date for determining limitation period is date of receipt of foreign exchange. Inasmuch as in the present case there is no dispute about the fact that all the refund claims were filed within the period of limitation from the date of receipt of foreign exchange, I am of the view that such refund claims are not hit by the bar of limitation.

4. The Lower Authorities have also observed that the appellant had not reversed the Cenvat Credit before filing of the refund claims. Though the appellant’s have produced a Chartered Accountant’s Certificate evidencing reversal of

refund amount shown in the balance sheet but they find that the said condition is only a procedural condition and cannot be adopted for denial of refund claim which is otherwise due to the assessee.

5. Similarly the objection of the Lower Authorities that the Cenvate Credit availed by the assessee on the basis of invoices which was not in the name of the registered business premises and hence was irregular, cannot be appreciated inasmuch as there is no dispute about the fact that the credit was otherwise available to the appellant.

6. For all the above reasons, I set aside the impugned order and allow all the appeals with consequential relief to the appellants.

(Order Pronounced in the open Court on 11.04.2019)

Sd/-
**(Archana Wadhwa)**
**Member (Judicial)**

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