IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/71099/2018-ST[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1944-17-18 dated 27/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Hi Life Hotels Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise & S.T., Noida **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 07/02/2019
Date of Decision : 07/02/2019

FINAL ORDER NO-**70228 / 2019**

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. NOI-EXCUS-001-APP-1944-17-18 dated 27/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the appellant were providing restaurant service. The appellant was paying service tax on 30% value as provided through abatement of notification and were not availing Cenvat credit. The

provisions related to abatement were amended on 01.07.2012. The amended provisions provided that appellant were eligible to take Cenvat credit of service tax paid on input services and service tax was to be paid on 40% of the value. The said amendment was not noticed by the appellant. During the course of audit it has come to knowledge of revenue that appellant did not pay service tax on 40% value. Therefore, proceedings were initiated. A demand of Rs.4,92,632/- was raised through show cause notice dated 11.05.2016. Before issuance of show cause notice appellant had paid Rs.86,340/- with interest of Rs.28,000/-. The appellant contended before the Original Authority that appellant was eligible for Cenvat credit of Rs.4,06,292/- for the period from July, 2012 to March, 2013. The contention of the appellant was that if the Cenvat credit is allowed to them and amount already paid by them already taken into consideration before the issue of show cause notice, the entire liability was discharged. The Original Authority has taken into consideration the provisions of Sub-rule (7) of Rule 4 of Cenvat Credit Rules, 2004 through which provision was introduced w.e.f. 01.09.2014 that Cenvat credit was to be availed within 6 months from the date of receipt of input service. He, therefore, rejected the admissibility of Cenvat credit to the appellant and confirmed the demand of Rs.4,92,632/-, appropriated Rs.86,340/- and imposed penalty of Rs.4,06,292/-. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) rejected the appellant's appeal. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant. He has submitted that the issue is whether provisions of Rules through which restriction of 6 months to avail Cenvat credit can be applied prospectively or retrospectively has been settled by the Hon'ble Allahabad High Court in the case of Collector of Central Excise, Allahabad Vs M/s Ram Swarup Electricals Ltd. reported at 2007 (217) ELT 12 (All.). He has submitted that the Hon'ble High Court had ruled that such amendment for prescribing time limit of 6 months was with prospective effect and therefore, appellant is eligible to take Cenvat credit for the period from 01.07.2012 to 31.03.2013 inspite of 6 months limitation being introduced w.e.f. 01.09.2014.

4. Heard the learned A.R. for revenue who has agreed that the issue is settled by the said ruling of Hon'ble High Court.

5. Having considered the submissions from both the sides and on perusal of above stated facts, I note that Hon'ble Allahabad High Court in para-7 of the ruling in the case Ram Swarup Electricals Ltd. (supra) have held as follows:-

> "Further, during the relevant period no limitation had been provided for availing of the Modvat credit and the amendment in Rule 57G prescribing the limit of six months was introduced on 29th June, 1995 which has prospective effect. Thus, the respondents were within their right to avail the short fall in the Modvat credit at any time."

I find that the said ruling is squarely applicable in the facts of the present case. Since during the period from 01.07.2012 to 31.03.2013 there was no such restriction to avail Cenvat credit within 6 months from the date of receipt of services, by following the ruling of Hon'ble High Court as stated above, I find that the appellant were eligible for Cenvat credit of Rs.4,06,292/-.

6. I, therefore, set aside the impugned order and allow the appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

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