CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 71186 of 2018

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-2009-17-18 dated 28/03/2018 passed by Commissioner of Customs & Central Tax (Appeals), Noida)

M/s Computer Sciences Corporation India Private Limited

.....Appellant

VERSUS

Commissioner, Service Tax, Commissionerate, Agara

....Respondent

APPEARANCE:

Shri Sparsh Bhargava, Advocate, for the Appellant
Shri Rajeev Ranjan, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 70751/2019

Date of Hearing : 08/04/2019
Date of Decision : 08/04/2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Sparsh Bhargava – ld. Advocate appearing on behalf of the appellant & Shri Rajeev Ranjan – ld. Additional Commissioner appearing on behalf of the Revenue, we note that the appellants were issued with a show cause notice dated 31.08.2015, invoking the provisions of Rule 14 of Cenvat Credit Rules read with Section 73 of the Finance Act, 1994 for the period from April, 2011 to September, 2012. The said

Cenvat Credit was disallowed and through Order-in-Original the said Order was sustained through impugned Order-in-Appeal. On hearing and after perusal of the facts on records, we note that for the period from July, 2011 to September, 2012 appellants were allowed refund of unutilized Cenvat Credit lying balance with them under the provisions of Rule 5 of Cenvat Credit Rules, 2004 and the same amount has been now sought to be recovered from the appellant without resorting to provisions of Section 11A of the Central Excise, 1944 made applicable to Service Tax through Section 83 of Finance Act, 1994. It is clarified that Revenue is seeking denial of such Cenvat Credit for the period from July, 2011 to September, 2012 which was allowed as refund to appellant without following any procedure for recovery of refunded amount. Therefore, in any case the proceedings are not sustainable. For the period from April, 2011 to June 2011. We find that the demand has been hit by limitation since the show cause notice was issued on 31.08.2015 by invoking the extended period of limitation whereas all the Cenvat Credits availed by the appellant were within the knowledge of Revenue and were being regularly refunded to the appellant on quarterly basis. We, therefore, do not find impugned order to be sustainable. The impugned order is set aside and appeal is allowed.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ansari