CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71092 of 2018-CU[DB]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1895-17-18 dated 26/03/2018 passed by Commissioner (Appeals) Customs & Central Tax, Noida)

Commissioner, Central Tax (Central Goods & Service Tax) **.....Appellant**

(C-56/42, Renu Tower, Sector 62, Noida-201309)

VERSUS

M/s Viami Business Solution Pvt. Ltd. **....Respondent**

(D-88, Sector-30, Noida-201303)

APPEARANCE:

Shri Gyanendra Kumar Tripathi, Authorized Representative for the Appellant
None, for the Respondent

CORAM:

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

FINAL ORDER NO. - 70869/2019

Date of Hearing : 22.04.2019
Date of Decision : 22.04.2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri Gyanendra Kumar Tripathi learned A.R. appearing for the Revenue. Nobody appeared for the respondents.

2. On going through the impugned order, we find that demand was originally confirmed against the respondents by the Original Adjudicating Authority in respect of services received from foreign based companies under the category of "Consulting Engineering Services" on reverse charge basis. The appellate Authority observed that though the respondent was required to pay the said service tax on reverse charge mechanism but the tax paid by him was immediately available to the assessee as Cenvat credit, which they could have used for payment of service tax on their output services. As such, he has observed that the entire situation is Revenue neutral and there is no loss to the Revenue. He has also relied upon the Tribunal decision in the case of Jet Airways (I) Ltd. vs. Commissioner of Service Tax, Mumbai 2016 (44) S.T.R. 465 (Tri.-Mumbai), which stands upheld by the Hon'ble Supreme Court reported as 2017 (7) G.S.T.L. J35 (S.C.).

3. Revenue's only contention in the appeal memo as regards the said finding of Commissioner (Appeals) is that it was statutory requirement of the assessee to first discharge the said service tax on reverse charge basis. Without payment of service tax, they were not in a position to avail Cenvat credit. As such Commissioner (Appeals) was not justified in setting aside demand on the ground of Revenue neutrality.

4. Admittedly the service tax required to be paid by the assessee was available to them as credit. Further it seems that appellant was providing output services, which were also

taxable. During the period in question, they paid service tax on output services by way of cash. Had they paid service tax on the input services received by them, they could have taken the credit and utilized that credit for payment of duty, instead of paying service tax in cash. We also note that the Appellate Authority has gone to the figures of the cash payment of tax and by comparing the same with their liability to pay tax, has come to the right conclusion of Revenue neutrality. Reliance by the Appellate Authority on the Tribunal's judgment in the case of Jet Airways (I)) Ltd. is appropriate. The said decision also stands upheld by the Hon'ble Supreme Court. As such no infirmity can be found in the impugned order of Commissioner (Appeals).

5. Revenue's appeal is accordingly rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks