CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70066 of 2019-[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/290-291/2018-19 dated 05/09/2018 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

Commissioner of Central Excise, **.....Appellant**

(Meerut)

VERSUS

M/s Godwin Construction (P) Ltd. **....Respondent**

(NH-58, Baghpat Crossing, Meerut)

APPEARANCE:

Shri Shiv Pratap Singh, Deputy Commissioner, Authorised Representative for the Appellant
Shri Shubham Agarwal, Advocate for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 71245 / 2019

Date of Hearing : 28/06/2019
Date of Decision : 28/06/2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by learned Commissioner (Appeals), revenue is in appeal.

2. After hearing both the sides duly represented by Shri Shiv Pratap Singh learned Authorised Representative appearing for revenue and Shri Shubham Agarwal learned Advocate appearing for respondent, I find that the respondent is engaged in the construction activities and was availing the benefit of abatement in terms of Notification No.1/2006-ST dated 01.03.2006. As per the conditions of the said notification, the same is available subject to the assessee not availing the Cenvat credit. Inasmuch

as, the respondents availed the Cenvat credit in respect of inputs as also input services and simultaneously availed the benefit of Notification No.1/2006-ST, as amended, revenue initiated proceedings against them for denial of the credit. The said credit availed by the assessee was confirmed by the Order-in-Original to the extent of Rs.23,89,810/-.

3. The said show cause notice was adjudicated by the Additional Commissioner, who observed that as the credit was availed by the respondent, prior to availment of the notification, it is the notification benefit which has to be denied. He further observed that the notice is proposing denial of the credit and not the denial of notification. The credit at the time of availment was correct and as such, he vacated the show cause notice. The said order was challenged by revenue before Commissioner (Appeals), who upheld the same. Hence the present appeal by the revenue.

4. On going through the impugned order, I find that there is no dispute about the legal position. The service tax assessee providing construction services is entitled to either the Cenvat credit or the benefit of abatement in terms of Notification No.1/2006-ST. If both the facilities are availed by an assessee simultaneously, one of them has to be denied. In the present case, the revenue, at the time of issuance of show cause notice accepted the assessee's option of availment of Notification No.1/2006. In such a scenario, the credit availed by the assessee was required to be reversed, for which purpose show cause notice was issued. The respondent cannot be allowed to avail both the benefits i.e. availment of the Cenvat credit as well as the abatement.

5. The authorities bellow have granted the relief only on the sole ground that the notice, instead of denying the abatement has denied the Cenvat credit. I do not find any reasons to appreciate and uphold the said findings of the lower authorities. The show cause notice has extended the larger benefit of abatement to the assessee in terms of the notification and in that context directed them to pay back the Cenvat credit so

availed by them. The assessee cannot be allowed to retain both the benefits on the technical grounds that the notice disallowed the Cenvat credit which was availed prior to availment of abatement of notification. I find no merits in the above reasoning of the lower authorities and accordingly reverse the said decision.

6. On being questioned learned Advocate fairly agrees that the benefit of abatement Notification No. 1/2006-ST, as amended, is more beneficial to them and they should be allowed to retain the benefit of the same. In such a scenario, the Cenvat credit so availed by them is required to be reversed, I order accordingly.

7. Revenue's appeal is allowed in above terms.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

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