CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70608 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1774-1779-17-18 dated 28.02.2018 passed by Commissioner (Appeals), Central Goods & Services Tax, Noida.)

M/s. Sand Martin Consultants Pvt.Ltd. ...Appellant

(C-14, Sector-7, Noida, U.P.-201301.)

VERSUS

Commissioner (Appeals), Central Goods & Services Tax, Noida .....Respondent

(C-56/42, Renu Tower Sector 62,

Noida (U.P.))

APPEARANCE:

Written submission for Appellant

Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :

Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 70234 / 2020

DATE OF HEARING : 17 February, 2020
DATE OF PRONOUNCEMENT: 20 February, 2020

ARCHANA WADHWA

As per facts on record, the appellant filed refund claims of accumulated Cenvat credit in terms of the provisions of rule 5 of Cenvat Credit Rules, 2005 read with Notification No.27/2012-CE(NT) dated 18 June 2012. While scrutinizing the said refund claims, the lower authorities entertained a view that the Cenvat credit availed by the assessee was not in accordance with law inasmuch as the same was availed on the basis of invoices which were not proper or in respect of services which were not Cenvatable. Accordingly proceedings were initiated against them proposing to reject the refund applications.

2. The said show cause notice resulted in passing of an order by the Original Adjudicating Authority and upheld by Commissioner(Appeals) rejecting refund applications on the ground that the credit availed by the assessee was not proper and as such refund of the same cannot be granted to the appellants.

3. Learned advocate has filed written submissions bringing to my notice that the same impugned order, which disposed of five appeals, stands set aside by the Tribunal in the four appeals. I have gone through the earlier order No.71511-71514/2019 dated 05 August, 2019 setting aside the same impugned order by observing as under:-

> *"4. I find that Rule 5 allows refund of accumulated Cenvat credit availed by an exporter. It is seen that no objection was raised by the Revenue at the time of availment of Cenvat credit and no proceedings were initiated against them for denial of such Cenvat credit. It is only while disposing of the refund applications, the lower authorities observed and held that Cenvat credit was not availed properly.*
>
> *5. It is well settled by various decisions that the Revenue cannot object to the availment of the Cenvat credit at the time of deciding the refund application. If the Revenue was of the view that the credit was not availed properly, proceedings have to be initiated at that particular point of time for denial of the said credit. The same cannot be held to be inadmissible at the time of adjudicating the refund applications filed by an assessee. As such I find no justifiable reasons to uphold the impugned orders. Accordingly the same are set aside and all the four appeals are allowed with consequential relief to the appellant."*

4. Inasmuch as the impugned order already stands set aside, I allow the present appeal also with consequential relief.

(Order Pronounced in the open Court on 20 February, 2020)

(Archana Wadhwa)
Member (Judicial)

Nihal