CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70360 of 2019

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1951-18-19 dated 01/03/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

Principal Commissioner Central Tax

(Central Goods & Services Tax), Noida .....Appellant

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

VERSUS

M/s Smart Value Products & Services Ltd. ....Respondent

(E-27, Sector-63, Noida)

APPEARANCE:

Shri B. K. Jain, Authorised Representative for the Appellant
Ms. Pragya Pandey, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. – 70250/2020

Date of Hearing : 19 February, 2020
Date of Decision : 19 February, 2020

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) Revenue has filed the present appeal. We have heard learned A.R. Shri B. K. Jain appearing for the Revenue and Ms. Pragya Pandey learned advocate appearing for the respondents.

2. On going through the impugned orders, we find that the appellants were issued a show cause notice dated 21/10/2014 for demand of Service Tax to the tune of around Rs.34.81 crores approximately. It is seen that during the pendency of the adjudication proceedings the appellant deposited amount of Rs.22.75 crores approximately. Show cause notice issued for confirmation of demand resulted in passing of an order by the Original Adjudicating Authority confirming the demand alongwith interest and imposition of penalties. However on appeal the Tribunal vide its Final Order No.ST/A/71643/2018-CU(DB) dated 26/07/2018 set aside the order of confirmation of demand and allowed the appeal filed by the assessee with consequential relief to them.

3. As a consequence of passing of the order by the Hon'ble Tribunal, the assessee approached the Revenue for refund of the deposits made by them to the extent of Rs.22.75 crores. The Original Adjudicating Authority while dealing with the said refund observed that since the pre-deposit required to be made by the assessee at the time of filing of appeal was only 7.5% of the confirmed duty, which comes to Rs.2.53 crores approximately, the respondent would be entitled to the refund of the same. It was also observed in his impugned order that for the balance amount of Rs.20.21 crores approximately a separate show cause notice is being issued to them. Accordingly vide his order dated 28/12/2018 he sanctioned the amount of Rs.2,53,79,386/- alongwith interest.

4. The said order of the Original Adjudicating Authority was impugned by the assessee before Commissioner (Appeals). Appellate Authority observed that the entire deposits made by the assessee during the course of investigation or thereafter have to be treated as pre-deposit and on success of the appeal before the Tribunal, the assessee is entitled to the refund of the same. Accordingly, he modified the order of the Original Adjudicating Authority and sanctioned the balance amount of Rs.20,21,75,052/- alongwith the interest applicable at the rate from the dates of deposits till the date of sanction.

5. Revenue being aggrieved with the said order filed the present appeal. The contention of the learned A.R. is that in the order impugned before Commissioner (Appeals), the Assistant Commissioner had not rejected the balance amount of Rs.20.21 crores approximately and has issued a separate show cause notice to the assessee. As such, it was not open to Commissioner (Appeals) to sanction balance refund claim *suo motu*.

6. Learned advocate appearing for the respondents submits that subsequently issued show cause notice also stands adjudicated by the Original Adjudicating Authority sanctioning the refund claim. As such the only objection raised by the Revenue does not survive. It also stands brought to our notice by the learned advocate that subsequent order by the Assistant Commissioner has not been appealed against by the Revenue.

7. We note that the Original Adjudicating Authority vide his first order sanctioned an amount of Rs.2.53 crores approximately out of the total claim of refund of Rs.22.75 crores approximately made by the assessee. This leads to evident conclusion that the balance refund claim stands rejected by him. In this scenario, the order of the Commissioner (Appeals) allowing the balance refund claim cannot be said to be out of the scope of the impugned order before him. In any case and in any view of the matter the subsequent show cause notice also stands decided by the Assistant Commissioner vide his order dated 26/04/2019 sanctioning the refund claim. As such, at the most the objection raised by the Revenue is only of technical objection. Accordingly, Revenue's appeal is rejected.

8. However, we make it clear that the assessee would be entitled to the said refund only once and not as a consequence of passing of two different orders one by the Commissioner (Appeals) and the other by the Assistant Commissioner.

9. Revenue's appeal is disposed of in above manner.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks