CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I (e-hearing)

Service Tax Appeal No. 60001 of 2020

[Arising out of Order-in-Appeal No. 135-CE-CGST-APPEAL-GURUGRAM-SG-2019 dated 30.09.2019 passed by the Commissioner (Appeals) CGST, Gurgoan]

M/s C N S Comnet Solution Pvt Ltd **……Appellant**
(433 Udyog Vihar Phase III,
Gurugram 122016)

VERSUS

Commissioner of CE & ST, Gurgaon-I **……Respondent**
(Plot No. 36-37, Sector 32, Near Medanta Hospital,
Gurgaon 122001)

WITH

Service Tax Appeal No. 60002 of 2020

[Arising out of Order-in-Appeal No. 133-CE-CGST-APPEAL-GURUGRAM-SG-2019 dated 30.09.2019 passed by the Commissioner (Appeals) CGST, Gurgoan]

M/s C N S Comnet Solution Pvt Ltd **……Appellant**
(433 Udyog Vihar Phase III,
Gurugram 122016)

VERSUS

Commissioner of CE & ST, Gurgaon-I **……Respondent**
(Plot No. 36-37, Sector 32, Near Medanta Hospital,
Gurgaon 122001)

AND

Service Tax Appeal No. 60003 of 2020

[Arising out of Order-in-Appeal No. 134-CE-CGST-APPEAL-GURUGRAM-SG-2019 dated 30.09.2019 passed by the Commissioner (Appeals) CGST, Gurgoan]

M/s C N S Comnet Solution Pvt Ltd **……Appellant**
(433 Udyog Vihar Phase III,
Gurugram 122016)

VERSUS

Commissioner of CE & ST, Gurgaon-I **……Respondent**
(Plot No. 36-37, Sector 32, Near Medanta Hospital,
Gurgaon 122001)

APPEARANCE:

Present for the Appellant: Mr. Sundeep Chadha, Consultant
Present for the Respondent: Mr. Vijay Gupta, Authorized Representative

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60489-60491/2021

DATE OF HEARING: 03.02.2021
DATE OF DECISION: 03.02.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned orders wherein their refund claim lying unutilized in their cenvat credit account was denied to the appellant on the ground that the service on which they are taken the cenvat credit is not input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant is a provider of output services. While providing these services, the appellant requires certain services to be availed from outside on which (being an EOU) the appellant is required to pay service tax under reverse charge mechanism. The appellant paid service tax under reverse charge mechanism and took the cenvat credit of the same in their cenvat credit account. Periodically the appellant filed the refund claims under Notification No. 27/2012 dt. 18.06.2012 for the cenvat credit lying unutilized in their cenvat credit account. The cenvat credit was sanctioned partly but the cenvat credit pertains to 'rent a cab service' was denied holding that the vehicles which have taken on rent by the appellant are not registered in the name of service provider, therefore, they are not entitled to take the cenvat credit on

the same in terms of the Rule 2(l) of the Cenvat Credit Rules, 2004 as these are not capital goods, therefore the refund claim was denied. Against those orders, the appellant is before me.

3. The ld. Consultant for the appellant submits that as the appellant has paid service tax under reverse charge mechanism, therefore, they have taken the cenvat credit and at the time of payment of service tax on this service, it was not objected by the Revenue that this is not an input service for you, therefore, they are not required to pay service tax. As they have paid service tax, therefore, they are entitled to take the cenvat credit of the same. It was further submitted that the audit was conducted in the year 2019 and a show cause notice was issued to that effect to the appellant but without any dispute of availment of the cenvat credit on 'rent a cab service'. Therefore, as at the time of availemnt of the cenvat credit, it was not disputed, therefore, while claiming refund claim, it cannot be disputed. Therefore, the impugned orders are required to be set aside.

4. On the other hand, the ld. A.R. for the Revenue submits that at this time we are dealing with the issue of availment of the cenvat credit by the appellant on the service in question i.e. rent a cab service and admittedly this is not an input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 as the vehicle which are not registered in the name of service provider are not capital goods, therefore, their refund claim was rightly rejected holding that these are not input service, therefore, they are not entitled to take the cenvat credit, hence, the refund claim is not maintainable. He further

submits that the audit conducted in 2019 have no bearing for availment of the cenvat credit during the period in question.

5. Heard the parties and considered the submissions.

6. It is an admitted fact on record that the appellant has taken the cenvat credit on rent a cab service where the service provider has charged the service tax from them and for the remaining invoices, they have paid the service tax under reverse charge mechanism and availed the cenvat credit of the same. It is also a fact on record that at the time of availement of the cenvat credit, it was never disputed that the appellant is not entitled to the cenvat credit on the service in question. The dispute in the matter is of sanction of refund claim of unutilized cenvat credit in their account not the issue of availment of the cenvat credit on the input service, therefore, the Revenue has fell in error and wants to raise the issue of availment of the cenvat credit while entertaining the refund claim. In case, the appellant had not filed the refund claim, the appellant was entitled of the cenvat credit which was not objected at the time of availment. In that circumstance, I hold that at the time of entertaining the refund claim, the issue of admissibility of the cenvat credit cannot be raised. Therefore, I do not find any merits in the impugned orders, the same are set aside.

7. In result, the appeals are allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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