CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53569 of 2018-SM

(Arising out of order in appeal No. 297(AG)/CE/JDR/2018 dated 01-04.06.2018 passed by the Commissioner (Audit), Central Excise & Central Goods, Service Tax, Jodhpur).

M/s Dynamic Engineers & Consultants **Appellant**
Rampuria Niwas, Rajendra Marg
Bhilwara (Rajasthan) – 311001.

VERSUS

Commissioner of Central Excise and Central Goods & Service Tax **Respondent**
142-B, Hiran Magri, Sector-11
Udaipur (Rajasthan) -313001.

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50670/2020

DATE OF HEARING/DECISION: 06.03.2020

ASHOK JINDAL:

The appellant is in appeal against the order, wherein refund claim has been rejected by the Commissioner (Appeals) on the ground that the appellant is not entitled to avail cenvat credit against the supplementary invoices issued by the sub-contractor.

2. The facts of the case are that the appellant is engaged in providing of certain construction services and sub-contracted to the contract to the sub-contractor. Finally, the sub-contractor did not raise invoice for the work done by sub-contractor. Later, on pointing

out by the Revenue to the appellant, the sub-contractor paid the service tax and the appellant availed cenvat credit of service tax thereon. Thereafter, the adjustments took place and the appellant filed refund claim for excess cenvat credit lying in the cenvat credit account. The refund claim was rejected on the ground that on supplementary invoices in terms of Rule 9(1)(b)(b) of 2004, the appellant are not entitled to take cenvat credit on supplementary invoices. Therefore, they are not entitled to avail cenvat credit. Against the said order, appellant is before me.

3. Heard the parties.

4. In this case, the only dispute is that whether the appellant is entitled to avail cenvat credit on supplementary invoices issued by the sub-contractor in terms of Rule 9(1)(b)(b) of Cenvat Credit Rules, 2004 or not?

5. Admittedly, sub-contractor did not pay service tax under the impression that on the entire amount of contract, the appellant is paying service tax, therefore, there is no requirement to pay the service tax. Later on, it was held sub-contractor is liable to service tax on the work executed by them. Therefore, the sub-contractor issued supplementary invoices after paying service tax. When service tax has been paid by the sub-contractor, the appellant availed cenvat credit on the strength of supplementary invoices in terms of Rule 9(1)(b)(b) of Cenvat Credit Rules, 2004. An assessee is not entitled to avail cenvat credit if service tax has been paid on the strength of supplementary invoices if it is a case of fraud,

collusion, suppression of facts etc. Admittedly, in the case in hand, in fact, whether sub-contractor is liable to pay service tax or not, in that circumstances, fraud, collusion, suppression of facts are absent, therefore, the appellant is entitled to avail cenvat credit.

6. In view of this, I hold that the appellant has correctly taken cenvat credit on the strength of supplementary invoices issued by sub-contractor. Consequently, they are entitled to avail cenvat credit.

7. As discussed above, the impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated and pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Pant