CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86041 OF 2019

[Arising out of Order-in-Appeal No: MKK/207/RGD-APP/2018-19 dated 30th August 2018 passed by the Commissioner of Central Tax (Appeals), Raigad.]

Radius Corporate Solutions (India) Pvt Ltd
7th Floor, HC Building, Tower-C, LBS Marg
247 Park, Vikhroli (W), Mumbai - 400083 … ***Appellant***

versus

Commissioner of Service Tax VII
16th Floor, Satra Plaza, Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400705 ***…Respondent***

APPEARANCE:

None for the appellant

Shri S K Hatangadi, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85151 /2022

DATE OF HEARING: 22/02/2022
DATE OF DECISION: 22/02/2022

Though none appeared on behalf of the appellant to advance arguments in support of their challenge to order-in-appeal no. MKK/207/RGD-APP/2018-19 dated 30th August 2018 of Commissioner of Central Tax (Appeals), Raigad, the appeal is taken up, with the assistance of Learned Authorised Representative, for disposal of the limited prayer on the ‘typographical/clerical error’ that the first appellate authority declined to rectify with severe repercussions to them.

2. The appellant, claiming to be a provider of services that are exported from the country, sought refund of accumulated CENVAT credit of ` 58,73,379/-, ` 191,93,812/- and ` 33,81,099/- for April to June 2016, July to September 2016 and October to December 2016 respectively totaling ` 111,68,281/-. The original authority, while sanctioning refund of ` 61,81,920/-, rejected claims for `18,11,047/-, ` 17,58,356/- and ` 14,69,599/- in the three quarters totaling ` 49,86,362/- which was also directed to be recovered along with interest thereon. The first appellate authority, after considering the several claims in the appeal filed by the assessee, re-determined the eligibility but, while allowing further part of the claim to the extent of ₹ 45,94,327, did not elaborate upon exclusion of ₹ 3,92,035.

3. It is pointed out in the appeal memorandum that the first appellate authority, instead of specifying that the consequence of his findings was allowing of the appeal to the extent of ` 49,86,362/-, held as ineligible by the original authority, erred in stating it to be ₹ 45,94,327 for which the appellant had, *vide*, letter dated 15th January 2019, sought the intervention of the office of the appellate authority to set right. Instead, *vide* their letter dated 21st January 2019, intimating

that elapse of close to six months, the said office pleaded their helplessness in the matter. The refund releasing authority, in order dated 31st January 2019, did not consider it appropriate for the differential amount to be disbursed prompting this appeal for setting right the order of the first appellate authority.

4. The disinclination on the part of the first appellate authority to consider rectification that does not compromise the intent of his order is inexplicable. It is certainly not the attitude expected of a senior functionary who is tasked with statutory empowerment to be discharged in a responsible and responsive manner. To offer the hapless appellant gratuitous advice of appellate recourse to the Tribunal is adding insult to injury. Heeding that advice, the assessee is before us with consequent expending of time and effort on the part of the Tribunal. Unless a serious, and punitive, view is taken of this episode, we encourage opening the floodgates of such ‘upward delegation’ that is inimical to public interest. Cost of ₹ 5000, to be paid into the account of the Maharashtra Legal Aid Services Authority, is imposed on the officer concerned to be identified by the Commissioner of Customs (Appeals) upon due inquiry to fix responsibility for the lapse.

5. The Tribunal, though not entrusted with responsibility for rectification of ‘typographical/clerical’ errors in orders of lower authorities, cannot justify its existence within the judicial edifice in

turning away an appellant, who is in conformity with the prescriptions of section 35B of Central Excise Act, 1944, from the portals of justice. Consequently, the matter is remanded back to the first appellate authority for correction of such errors as are to be rectified.

(Operative Part of the Order pronounced in the open court on 22nd February 2022)

(C J MATHEW)
Member (Technical)

**/as*