

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

Service Tax Appeal No. 85002 of 2020

(Arising out of Order-in-Appeal No. NA/CGST/A-I/MUM/110/2019-20 dated 28.08.2019 passed by the Commissioner of GST & Central Excise, Mumbai(Appeals)).

**Overseas Infrastructure Alliance India Private
Limited**

.....Appellant

501-502 OIA House 470, Cardinal Gracious Road,
Andheri East, Mumbai-400099.

VERSUS

Commissioner of GST & Central Excise,

.....Respondent

9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai-400 012.

APPEARANCE:

Shri V.K. Singh, Advocate for the Appellant

Shri S.B.P. Sinha, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86161 / 2022

Date of Hearing: 06.12.2022

Date of Decision: 06.12.2022

PER: AJAY SHARMA

This appeal has been filed challenging the order dated 28.08.2019 passed by Commissioner (Appeals) CGST & Central Excise, Mumbai.

2. The issue involved herein pertains to denial of Cenvat Credit as well as interest on delayed refund to the appellant. During the hearing Learned Consultant appearing for the appellant submitted that the refund of Cenvat Credit was rejected on the ground that the electricity poles, which are in issue, falls within "civil structure" as provided under exclusion clause of Rule 2(I) of Cenvat Credit Rule, 2004. According to learned Consultant the term 'Civil Structure' which has been used in Rule 2(I)(A)(a) comes after the

word "Building" therefore the word 'civil structure' means the structures which are akin to buildings and not the poles and in support of his submission learned Consultant placed on record the law laid down by the Hon'ble Supreme Court in the matter of *Siddheshwari Cotton Mills (P) Ltd. V/s Union of India and Anr, 1989 (39) E.L.T. 498 (S.C)* in which the Hon'ble Supreme Court while applying the principles of *ejusdem generis* has held that the true scope of the rule of "*ejusdem generis*" is that the words of a general nature following a specific and particular words should be construed as limited to the things which are of the same nature as those specified. Learned Consultant further submitted that the aforesaid plea alongwith the judgement of the Hon'ble Supreme Court was specifically raised before the learned Commissioner but learned Commissioner without giving any findings on the said submission or on the applicability of the judgement of Hon'ble Supreme Court, had brushed aside the submission merely by stating that it is not relevant. Per Contra Learned Authorised Representative appearing on behalf of the Revenue supported the findings recorded in the impugned order and prayed for dismissal of the appeal.

3. It is settled principle that Justice need not only be done but it should be seem to be done. Although a specific plea has been raised by the Appellant but the learned Commissioner failed to give any findings on the said plea. In my view the plea raised by learned Consultant has a bearing on the merits and therefore the learned Commissioner ought to have gone into the submissions of the appellant and recorded a finding thereon. He jumped to the conclusion without recording any finding. Mere recording of conclusion without discussions on submission or case laws is no consideration and the absence of reasons has rendered the impugned order unsustainable. Therefore without going into the merits of the appeal and without deliberating on other issues, I am inclined to remand the matter back to learned Commissioner (Appeal) with a direction to decide the appeal afresh and to give detailed findings on the pleas raised by the appellant. All the

issues are left open. It goes without saying that the said authority must adhere to the principle of natural justice.

4. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand.

(Dictated & Pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

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