CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70199 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1250-19-20 dated 10/12/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s MD Everywhere India Pvt. Ltd., ...Appellant
(A-61, B/3, Sector-63, Noida-201301)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida ....Respondent

(Division-VI, E-5, Sector-1, Noida-201301)

APPEARANCE:

Shri Yuvraj Singh, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70288/2023

DATE OF HEARING : 21 December, 2023
DATE OF DECISION : 21 December, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-1250-19-20 dated 10/12/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

5.1 The details of refund claim rejected by the adjudicating authority on input services can be summarised as under:-

a. CENVAT credit availed after expiry of six months from the date of issue of invoices-Rs 729970/-

b. CENVAT credit not covered under input services lunch and dinner charges, Rs.25,288/- and pantry and mobile charges Rs.10,043/-

C. Inadmissible CENVAT credit taken on invoices addressed to the unregistered premises. Rs.7,18,070/-.

5.3 ***I proceed with point no.(a)-*** *CENVAT credit availed after expiry of six months from the date of issue of invoices-*

5.3.1 I find that Rule 4 of the CENVAT credit Rules, 2004 (Rules) deals with the conditions for allowing CENVAT credit. Vide notification no.21/2014-CE (NT) dated 11.07.2014, the following insertions have been made in the said rule.

"In the said rules, in rule 4, -

(a) in sub-rule (1), after the second proviso, the following proviso shall be inserted with effect from first day of September 2014, namely:

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9.",

5.3.2 Thus Rule 4 of the CCR 2004, clearly provides that, w.e.f 01.09.2014, credit of input/input services cannot be availed after expiry of six months from the date of issue of invoices/documents as specified in sub-rule (1) of rule 9.

5.3.3 1 find that in the instant case, it has been alleged that the appellant has taken cenvat credit after expiry of six months from the date of invoices. In response it has been contended by the appellant that the SCN has wrongly considered the date of payment of invoice to be the date of availment of CENVAT credit, and nowhere the adjudicating authority has given any substantial reason that credit was not availed within six months. In this regard Rule 9(5) of CCR 2004 clearly provides that "the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit." I find that the appellant has not given any concrete evidences at any point of time, to substantiate *that the CENVAT credit was availed within the stipulated time, as provided in relevant rules. I therefore do not find any reason to interfere in the decisions of the adjudicating authority in this mater, and uphold the rejection of the refund claim of CENVAT credit availed after expiry of six months from the date of issue of invoices-*

5.5 I proceed with the third issue whether Registration is a precondition/ pre-requisite for eligibility of CENVAT credit under CENVAT Credit Rules 2004 or any statutory provisions in Finance Act.

5.5.1 Rule 3(1) of the Cenvat Credit Rules, 2004 provides that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit inter alia of the Service Tax leviable under Section 66 of the Finance Act, paid on the following:

"(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004. The expression input service' is defined in Rule 2(1) as follows "(1) "input service" means any service, - used by a provider of taxable service for providing an output service; or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal.

and includes……….”

5.5.2 I observe that the place where the input service is received is not relevant for determining the availability of the credit on such input service and once a service satisfies the definition of input service a service provider/manufacturer will be eligible for taking cenvat credit of service tax paid on such a service even if the service is received outside the premises as the Rule 3 of

CCR 2004, does not prescribe that the input services has to be received at the registered premises only.

5.5.3 I further observe that once the service qualifies as 'input service' independently or is specified in the inclusive part of the definition of 'input service for the provision of the output service, the credit of the same is admissible and there is no condition that the same has to be received within the registered premises of output service provider/manufacturer. A service provider/manufacturer can avail cenvat credit of service tax paid on various input services as long as the said services are used by the service provider for providing the output service or manufacturer in or in relation to the manufacture of final products and the place where the input service, has been received by the output service provider/manufacturer is not relevant for determining the availability of credit on such input service.

5.5.4 I place reliance on the judgment of the Karnataka High Court in the case of mPortal India Wireless Solutions Pvt. Ltd. v. C.S.T., Bangalore 2012 (27) ST.R. 134 (Kar.) which held that there is no restriction in availing Cenvat credit before registration is granted. The Hon'ble High Court held that "insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside"

5.5.5 I find that in the case of C.S.T.. Chennai Vs. E-Care India Private Limited 2017 (52) S.T.R. 246 (Mad.) the Hon'ble High Court Madras, while dismissing the appeal of the department held that "Refund Accumulated Cenvat credit Unregistered unit - Export of services - Issue already settled in a judgment delivered today, i.e.. 10-4-2017, in C.M.A. No. 860 of 2017, taking same view as taken by Karnataka High Court in 2016 (43) S.T.R. 57 (Kar.) that registration under Service Tax not required for refund in such cases Rule 5 of Cenvat Credit Rules, 2004."

5.5.6 Further in the case of Commm. of S.T.. Bangalore vs. Tavant Technologies India PVT. Ltd., 2016 (43) S.T.R. 57 (Kar.), the Hon'ble High Court, while dismissing the appeal of the department held that "Cenvat credit - Availment of and refund of unutilized credit - Service Tax registration is not required for this purpose - There is no rule or statutory provision which makes registration condition precedent. [paras 4, 5, 6]"

5.5.7 Hence the credit involved to the tune of Rs 7,18,070/-, is admissible and consequently eligible for refund under Notification 27/2012-CE (N.T) read with Rule 5 of the Cenvat Credit Rules, 2004.

6. In view of the facts and circumstances, as discussed herein above and the provisions as stipulated in the statute mentioned, cited case laws and following the principle of judicial discipline, I partially allow the appeal to the appellant by modifying the Order-in-Original No.10/DC/Div-VI/N/2018-19 dated 15/06/2018 to the above extent."

2.1 Appellant has filed a refund claim in terms of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27 of 2012-CE(NT) dated 18.06.2012 for the quarter October, 2014 to December, 2014 for Rs.15,95,542/-.

2.2 After following the due process adjudicating authority vide his Order-in-Original No.10/DC/D-VI/N/2018-19 dated

15.06.2018 sanctioned the refund claim to the tune of Rs.1,12,171/- and rejected the refund claim of Rs.14,83,371/- on the following grounds:-

a. Cenvat credit availed after expiry of six months from the issue of invoices- Rs.729970/-

b. Cenvat credit on lunch and dinner charges, Rs.25,288/- and pantry and mobile charges Rs.10,043/- are not covered under input services.

c. Inadmissible Cenvat credit taken on invoices addressed to the unregistered premises, Rs.7,18,070/-.

that accumulated Cenvat credit which is claimed as refund was taken by the appellant for stipulated period of six months from the date of issue of invoices in respect of services providers namely M/s Star Catalyst, M/s Arpit Chaurasia and M/s Walsons Services Pvt. Ltd.

2.3 Aggrieved appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order referred in para-1 above. Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Yuvraj Singh Advocate for the appellant and Shri Manish Raj Authorized Representative appearing for the revenue.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 From the impugned order it is quite evident that the invoices against which the appellant has taken the credit as indicated in the table below:-

Name of the Party	**Details of invoice**	**J V No**	**Amount of Credit Availed (Rs.)**	**Date of Availment of Cenvat credit (JV Booking Date)**	**Date and details of payment made To service provider**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
Star Catalyst	SCD/13-14/ST113 Date 01.01.2014	701	1,699/-	30.01.2014	Cheque No.369386 Dated 10.10.14
	SCD/13-14/ST008 Date 29.04.2014	43	1,699/-	30.04.14	Cheque No.384281 Dated 26.12.14

Arpit Chaurasia	05/Aug'13 Date 01.08.2013	292	1,37,020/-	01.08.2013	Rs.18,00,000/- vide Cheque No.373464 Dated 27.10.14
	06/Sept'13 Date 01.09.2013	356	80,330/-	01.09.13	
	06/Sept'13 (1349953)	356	1,63,007/-	01.09.13	Rs.42,00,000/- vide Cheque No.373466 Dated 18.11.14
	07/Oct'13 (2015212)	469	2,43,337/-	31.10.13	
	08/Nov'13 (834835)	550	1,00,806/-	30.11.13	

This fact is noted in the show cause notice and also in the Order-in-Original. From the perusal of the above, it is quite evident that all these invoices are for the period prior to 01.09.2014.

4.3 Delhi Bench of this Tribunal in the case of Bharat Aluminum Company Ltd. [2019-TIOL-2567-CESTAT-DEL] has held as follows:-

> *4. We find from the impugned order of Commissioner (Appeals) that the appellant has referred to and relied upon various precedent decisions of the Tribunal laying down that the time restriction of six months would not apply to the invoices issued prior to 01/09/2014. The Appellate Authority, very religiously, mentioned all these decisions in the order but sad enough, did not refer to the same in the operative portion of his order. Very cryptically, Commissioner (Appeals) rejected the appeal by observing that since the law was amended and time limit of six months was laid, the credit availed after the period of six months from the date of the invoice is not available to the assessee.*
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> *We really fail to appreciate the above conclusion drawn by Commissioner (Appeals) without even whispering about the applicability of various decisions referred to and relied upon by the appellant which clearly covers the issue in their favour. This attitude of Commissioner (Appeals) reflects on his predetermined mind to reject the appeals in a mechanical manner, thus putting the litigant into difficulty, apart from the increasing the burden and pendency of litigation at the higher level.*

5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions;

(i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad]

(ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366-CESTAT Bangalore]

(iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi]

(iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai]

(v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158-CESTAT Bangalore]

(vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi]

Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions."

4.4 The only reason stated in the impugned order for holding against the appellant is the delay beyond six months in taking the Cenvat credit. As this issue has been settled in favor of the appellant vide the above referred order of the Tribunal, I do not find any merits in the impugned order and set aside the same.

4.5 In the appeal filed by the appellant, he has not challenged the denial of the refund claim on lunch and dinner charges, Rs.25,288/- and pantry and mobile charges Rs.10,043/- are not covered under input services. No submission has been made on this account. Even at Sl No 13 in the appeal memo amount of refund rejected has been indicated as Rs 7,29,970/-. Accordingly, impugned order to that extent for denial of refund in respect of dinner charges and mobile charges is upheld. The, order to the extent of rejecting refund amount of Rs.7,29,970/- is set aside and remaining part of the impugned order is upheld. Accordingly, impugned order is modified to this extent.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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