REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70068/2015- dated 01/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

23/11/15

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/59615/2013 SM	KRONOS SOLUTIONS INDIA(P)LTD 8A, TOWER-A, 8^{TH} FLOOR KNOWLEDGE BOULEVARD SECTOR-62, NOIDA(UP)

Name and Address of Respondent	CCE NOIDA C-56/42, SECTOR -62, NOIDA(UP).

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH RUPESH KUMAR,ADV
F-12A(L.G.F) KAILASH COLONY
NEW DELHI-48

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T.Appeal No.59615/13

Arising out of O/A No.42/ST/APPL/NOIDA/2013 dated 28.02.2013 passed by Commissioner (Appeals) of Customs, Central Excise & S.Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Kronos Solutions India (P) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.Tax, Nioda RESPONDENT (S)

APPEARANCE

Shri Hrishikesh, Adv. for the Appellant (s)
Shri Dipak Kumar Deb, A.C. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 01.10.2015

FO ORDER NO. 70068/2015

Per Mr. Anil Choudhary :

The Appellant, M/s Kronos Solutions India (P) Ltd., is in Appeal against Order-in-Appeal No.42/ST/APPL/NOIDA/2013 dated 28.02.2013 passed by Commissioner (Appeals) of Customs, Central Excise & S.Tax, Noida.

2. Brief facts are that the Appellant is an STPI (100% EOU) Unit and engaged in providing taxable services i.e. "Information Technology Services" falling under Clause 105 of Section 65 of the Finance Act, 1994. The Appellant exported 100% of their services. The Appellant availed credit on the input services received in the course of their business. As no service tax is payable due to export, the Appellant could not utilize the input credit taken, accordingly, applied for refund of Rs.13,14,465/- for the period January, 2011 to March, 2011. The Appellant had applied for registration under the provisions of Service Tax Rules on 31.01.2011 and the Certificate issued on 21.02.2011. A show-cause notice dated 17.04.2012, was issued stating that during the scrutiny of the refund claim, it appears that the Appellants have availed inadmissible cenvat credit as some of the invoices are dated prior to the date of registration. In some of the invoices, the address of the Appellant is incomplete. Further, the credits taken for services, like, maintenance and repair services, outdoor services, training services, C.A.services, insurance auxiliary services, were not available as an input services for want of nexus. Further, on some of the invoices, the service tax code of the provider of services was not the mentioned or the address of the Appellant was

not complete. Accordingly, it appears that the credit taken on the strength of the invoices as mentioned at Sl.No. in the table contained in the show-cause notice, appears to be inadmissible under Rule 2 (l) of Cenvat Credit Rules, 2004 for want of nexus and further as pointed out certain invoices appeared to be not proper documents for availing credit in terms of Rule 9 of Cenvat Credit Rules, 2004. Further, it appeared that the Appellants have taken credit wrongly on the invoices mentioned at Sl.Nos.81-103 in the SCN as the payment was not made to the service provider during the relevant period resulting into violation of Rule 4,7 of Cenvat Credit Rules, 2004. Accordingly, it appeared that the assessee have wrongly availed cenvat credit of Rs.13,14,465/- under Rule 3 read with Rule 2 (l), Rule 4 (7) and Rule 9 of Cenvat Credit Rules, 2004. Accordingly, the refund of the said amount, it appeared ~~that the explanation~~ is not available under Rule 5 of Cenvat Credit Rules, 2004 out of the total refund claim of Rs.19,92,012/-. Accordingly, the appellant vide the show-cause notice, was required to show as to why the refund claim to the extent of Rs.13,14,465/- should not be rejected.

3. The Appellant contested the SCN by filing reply. It was contended therein that there is no dispute as to the fact of export of output services. Relying on the ruling of this Tribunal in the case of Sutham Nylocots Vs. CCE reported in 2005 (188) ELT 26 (Tri.Che), the modvat credit was denied on the ground that the assessee was not registered with the Central Excise Department and did not follow the statutory procedure during the period in question. This Tribunal allowed the benefit of modvat credit observing that the assessee is

subsequently registered with the Department and is following the procedure and therefore, they can legitimately claim the benefit of modvat credit on the yarns used in the manufacture of fabrics for the period under dispute. The Appellant has also relied on the CBEC's Circular No.220/54/96-CX dated 04.06.1996, wherein the CBEC has clarified that "Cash refund of the unutilized modvat credit is an incentive given to manufacturers-exporters and non-grant of such claim will affect the competitiveness of the Indian Industry in the International Market." The Appellant is also relying on the ruling of this Tribunal in the case of CST, Delhi Vs. Convergys India Pvt. Ltd. reported in 2009 (92) RLT 1017, wherein it has been held that a procedural lapse should not result in denial of substantive benefit of export rebate as liberal view would required to be taken in case of export. It was further contended that the registration certificate was granted in February, 2011, the Appellant did not apply earlier for registration as the exporter of services was not liable to take registration for claiming refund of cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.05/2006 dated 14.03.2006. It was also contended that in terms of the provisions of Section 68 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, they were not required to obtain any registration, the requirement of which is linked with liability for collecting and paying service tax. Thus , a person providing taxable services would be liable to obtain service tax registration only if he was liable to collect and pay the service tax. As such, proposal to refuse refund on the input invoices prior to the date of registration is bad in law.

Further, as regards the proposal of disallowing the input credit on 13 Invoices, for want of nexus with the output services, it was explained that each and every services is utilized in rendering or providing of the output services. As regards the proposal to disallow the cenvat credit in respect of service invoices, under the definition of Rule (9) of Cenvat Credit Rules, 2004, it was mentioned that the errors are not substantia~~te~~l and are simpl~~y~~e ~~declared~~ and contained substantial information as to charge of service tax on the input services and payment of the same by the Appellant. Further, there is no doubt raised in the SCN as to the receipt of services by the Appellant. The Appellant also annexed to the reply a detailed chart giving details of (i) Vendor Name, (ii) ST Code/Registration, (iii) Bill No., (iv) Bill Date, (v) Nature of Expenses, (vi) Bill Amount, (vii) Service Tax, (viii) Cheque/NEFT Issue date, (ix) Payment Clearance Date, (x) Reason for Disallowance, (xi) Remarks, from which it is evident that most of the Vendors of Services are registered.

4. The SCN was adjudicated by the order dated 31.05.2012 by which proposed amount of refund as calculated in the SCN was disallowed, Rs.13,14,465/- and further ordered for recovery or reversal along with interest under Rule 14 read with Section 73 of the Finance Act, 1944. Further, the refund was sanctioned Rs.6,77,547/-. Penalty was imposed under Rule 15 for availing inadmissible cenvat credit at Rs.5,000/-.

A97

5. Being aggrieved, the Appellant preferred an Appeal before the ld.Commissioner (Appeals), who vide the impugned order was pleased to allow the Appeal in part by setting aside to the extent of rejection of

refund claim amounting to Rs.3,12,023/- on Health Insurance Service, Rs.541/- on Photocopier Charges, Rs.3090/- on C.A.Service, Rs.25,750/- on Training Service and imposition of penalty of Rs.5000/- and upheld the recovery of the rest amount of Rs.9,73,061/- with interest.

6. Being aggrieved, the Appellant is before this Tribunal. Hence, the present Appeal.

7. In so far as the disallowance of cenvat credit of Rs.8,44,782/- on the ground of invoices dated prior to the date of registration is concerned, the Appellant relies on the ruling of the Hon'ble Karnataka High Court in the case of M/s mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore reported in 2012 (27) S.T.R. 134 (Kar.). It has been held that in case of export of services for the purpose of refund of cenvat credit availed on inputs, registration is not required and is not a condition precedent for the purposes of refund. The Hon'ble High Court has observed as follows :

> "7. In so far 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 existent in law. Therefore, said finding

Acn

recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."

Accordingly, it is held that the issue is settled in favour of the assessee. This ground is allowed in favour of the Appellant. Ground Nos.II, III, IV, V & VI, are also similar to Ground No.I, hence, decided in favour of the Appellant as regards the allowability of cenvat credit on the inputs received prior to the date of registration.

8. In so far as the issue of nexus is concerned, it is seen that some of the input services have already been held to be allowable, namely, on Health Insurance Service, Photocopier Charges, C.A.Service, Training Service etc.. As regards rent-a-cab service and outdoor catering service are concerned, the Hon'ble High Court of Karnataka in the case of CCEx., Bangalore II Vs. StanzenToyotetsu India Pvt. Ltd. reported in 2011 (23) STR 444 (Kar), has decided this issue in favour of the assessee. In so far as the maintenance and service charge are concerned, it is urged that the service is essential in order to keep equipment like AC in running condition so as to provide output services. Accordingly, the same is eligible as an input service utilized in output services.

9. The Appellant also referred to Board's Circular No.120/01/2010 ST dated 19.01.2010, wherein the CBEC have given detailed guidelines in order to expedite processing of refund claim under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.5/2006-CE (N.T.) dated 14.03.2006. It has been provided in the Circular that as regards incomplete invoices, the Department should take a liberal view in view of the various judicial pronouncements. It was further provided that

so far as the nature of the service which has been received by the exporter can be ascertained, tax paid therein is clearly mentioned and other details as required are mentioned, the refund should be allowed if the input service has a nexus with the output service exported. An assessee shall provide a C.A. Certificate, which shall clearly bring out the nature of the service and this will assist an officer for taking a decision. It is further urged that as there is no dispute in respect of the nature of input service and its utilization by the Appellant, the amount of rejection on this score of Rs.34,326/- be also held bad and allowable. It is further urged that in so far as non-~~allow~~ avail ability of records of the service provider in question on the website of NSDL, is concerned, there is no short coming on the part of the Appellant as the Appellant had provided the service tax registration number and other details of the service provider. The same has not been found to be untrue or un-verifiable. As such, the amount of cenvat credit of Rs.17,587/- should be allowed as admissible. In so far as the amount of Rs.45,316/- which have been disallowed on the ground that the invoices are addressed to un-registered premises, the ld.Advocate for the Appellant argued that as the receipt of input services and its utilization is verifiable, disallowance is bad and fit to be set aside. In so far as the issue of taking credit on invoices, which have been received subsequently to the period in question i.e. after 31.03.2011, it is urged that the same may be allowed, as the services were already received.

10. The ld. D.R. for the Revenue, relies on the impugned order and prays for dismissal of Appeal. He further states that in respect of

service providers, who service tax code or registration number is not reflected in the NSDL website, the credit had been rightly refused.

11. Having heard the rival contentions and on perusal of records, I hold that the Appellant is entitled to cenvat credit of the input services received prior to date of registration also as held by the Hon'ble High Court of Karnataka in the case of M/s mPortal India Wireless Solutions P. Ltd. (surpa). In so far as the issue of denial of cenvat credit of outdoor catering, rent-a-cab, maintenance and repairing service & expenses, I hold that due to nature of output service, outdoor catering service provided to the Appellant, being an exporter of service, works in the late night (odd hours) as such, rent-a-cab service is required for conveyance at odd hour as the normal transport is not available. Similarly, when an employee is working at odd hours, they also need to eat and as such, outdoor catering is also eligible. Similarly, maintenance of equipment services in the facts of the Appellant, is an essential input service, without which can not function or render output services. In so far as the amount disallowed of Rs.97,229/- (Rs.34,326/- + Rs.45,316/- + Rs.17,587/-), I hold that the amount of Rs.34,326/- and Rs.45,316/- is eligible as there is no dispute as to the receipt of services by the Appellant and payment of service tax chargeable. As regards the amount of Rs.17,587/- disallowed for non-availability of records of service provider on NSDL website, I set aside the issue and remand back to the adjudicating authority to verify manually, existence and/or registration status of the service provider and allow the credit subject to such verification. Accordingly, I set aside the balance demand amount of Rs.9,73,061/- being amount of

cenvat credit disallowed and upheld by the impugned order. Thus, the Appeal is allowed as indicated above.

12. The Adjudicating Authority is directed to complete the verification as regards the amount of Rs.17,587/- disallowed for non-availability of records of service provider on NSDL website, within a period of 60 days from the date of receipt a copy of this order. The Appellant is also directed to appear before the Adjudicating Authority within 30 days from the date of receipt a copy of this order along with documents in support of their claim to facilitate the verification. In any case, the appeal effect should be granted to the Appellant within a period of 75 days from the date of receipt of this Order.

6. Appeal is allowed as indicated above, in part.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
38, एम. जी. मार्ग, ...-211001
38, M. G. MARG, ALLAHABAD-211001