CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

<u>Appeal(s) Involved:</u>

ST/20640/2018-SM, ST/20641/2018-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-285 & 286-2017 dated 31/10/2017 passed by the Commissioner of Central Taxes & Central Excise, Cochin (Appeals)]

CCS Technologies Pvt. Ltd.
39/5173-D, K.C. Abraham Master Road, Panampilly Nagar,
Kochi – 682 036
Kerala

Appellant(s)

Versus

Commissioner Of Central Tax & Central Excise, Cochin
C.R. Buildings,
I.S Press Road
Cochin – 682 018
Kerala

Respondent(s)

<u>Appearance:</u>

Shri. Krishnan, CA
Jyothy, 134,
Panampilly Nagar,
Cochin - 682 036
Kerala

For the Appellant

Shri. K.B. Nanaiah, Assistant Commissioner (AR)

For the Respondent

Date of Hearing: 05/09/2018
Date of Decision: 15/10/2018

CORAM:
HON'BLE SHRI. P. DINESHA, JUDICIAL MEMBER

<u>Final Order Nos. 21663 – 21664 / 2018</u>

Per: P. DINESHA

These appeals are filed by the assessee. The appellant is engaged in rendering Information Technology Services having administrative office at Panampilly Nagar & branches at Kottayam and Kakkanad. CCS Technologies (P) Ltd. obtained Service Tax Registration No. AABCC1838QST001 in 2008. ST-3 Return was filed for the period October 2013 to March 2014 in April 2014 wherein cenvat credit has been utilized including service tax paid at Kakkanad Branch. There was an audit in the appellant's premises wherein the Revenue appears to have pointed out that certain invoices with address of the Branch office against which cenvat credit was availed seemed to be ineligible and hence, the same was required to be reversed. Thereafter, the appellant carried out the reversal of cenvat credit, remitted the same with interest under protest and then made a claim for refund. The Revenue issued a show-cause notice on 28.08.2014 proposing to reject the refund claim of the appellant and the show-cause notice culminated in the Order-in-Original dated 18.06.2015 wherein, the adjudicating authority has confirmed the proposals made in the show-cause notice, also imposed penalty and interest as applicable. On appeals, the appellant having not met with success, is in appeal before this forum.

2. Heard Shri. Krishnan, CA for the appellant and Shri. K.B. Nanaiah, DR for the Revenue, perused the materials on record and also gone through various decisions referred to during the course of hearing. On a perusal of the impugned order, I find that the reason for denial of cenvat credit was that the branch office of the appellant did not hold a Service Tax Registration at the material point of time. Further, I also find that it was one of the contentions of the learned consultant before the lower appellate authority that the branch office

of the appellant was an exempted unit in SEZ by virtue of which, there was no liability to service tax. I find that the Hon'ble jurisdictional High Court in the case of ***mPortal India Wireless Solutions P. Ltd.*** **reported in *2012 (27) S.T.R. 134 (Kar.)*** after considering the rival contentions has ruled as under:

> *"6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.*
>
> *7. 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."*

2.1. The above decision has been followed by the jurisdictional High Court in a latter decision reported in *2016 (43) S.T.R. 542 (Kar.)* in the case of *Kyocera Wireless (India) Pvt. Ltd*. and also by this very Bench in *2016 (43) S.T.R. 263 (Tri.-Bang.) in the case of Movik Networks India Pvt. Ltd.* and in *2016 (42) S.T.R. 79 (Tri.-Bang.)* in the case of *Broadcom India Research Pvt. Ltd.*

3. I find that the issue involved is identical to the one already considered by the jurisdictional High Court and therefore the same is no more *res integra.* Going therefore by the stare decisis of the above cases, I am of the view that the denial by the lower authorities is incorrect and unsustainable for which reason, I set aside the same. The assessee's appeals are therefore allowed with consequential benefits, if any.

(Order pronounced in Open Court on **15/10/2018**)

(P. DINESHA)
JUDICIAL MEMBER

...iss/sdd