CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. ST/41/2012

[Arising out of OIA No. 409-411/BK/GGN/11 dated 30.09.2011 passed by the Commissioner (Appeals) of Central Excise-Delhi-III]

Optum Global Solutions India Pvt. Ltd. : Appellant (s)
12th & 14th Floor, Tower, b, Sector 39 GURGAON
Haryana-122003

Vs

Commissioner of Service Tax, New Delhi : Respondent (s)
17-B, I.A.E.A.House, M.G.Road, I.P.Estate,
New Delhi, Delhi 110002

APPEARANCE:
Shri Vinayak Mathor, Advocate for the Appellant
Shri Bhasha Ram, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No.A/60798/2021

Date of Hearing:06/04/2021

Date of Decision:06/04/2021

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim of unutilized cenvat credit lying in their cenvat credit account for the quarter March 2008 was denied on the following ground:-

a) that at the time of availment of cenvat credit, the appellant was not registered with the service tax department

b) some of the services on which cenvat credit availed are not input services

2. Heard the parties. As issue whether the appellant is required to get himself registered before taking cenvat credit has been settled by
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the Hon'ble Karnataka High Court in the case of ***India Wireless Solutions Private Limited vs. Commissioner of Service Tax, Bangalore 2011-TIOL-928-HC-KAR-ST*** wherein it has been held that the assessee has taken the cenvat credit and taken registration later on cannot be the ground for denial of cenvat credit, therefore, I hold that the appellant has correctly taken the cenvat credit and is entitled for refund thereof.

3. With regard to denial of cenvat credit on the ground that certain services are not input service is also settled law by this Tribunal in the case of ***Commissioner of Service Tax, Delhi vs. Convergys India Pvt. Ltd. – 2009 (16) STR 198 (Tri.-Del.)*** wherein it has been held that as it has not been disputed, the availment of cenvat credit, therefore, at the time of claiming refund, the said issue cannot be raised. Therefore, in view of this, I hold that the refund claim cannot be denied.

4. In view of the above observation, I hold that the appellant is entitled to cenvat credit which has been denied on the above grounds. Accordingly, the impugned order qua denial of refund of the amount in dispute is set-aside and the appeal is allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.