

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]**

Appeal No.: E/41808/2017

[Arising out of Order-in-Appeal No. 293/2017 (CXA-II)
dated 31.05.2017 passed by the Commissioner of Central
Excise (Appeals-II), Chennai]

M/s. LEO Primecomp Pvt. Ltd., : **Appellant**
No. 61 & 62, Lakshmanan Nagar,
Kandanchavadi,
Chennai – 600 096

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai South Commissionerate

Appearance:-

Shri. S. Viswanathan, Advocate
for the Appellant
Shri. B. Balamurugan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 27.11.2018

Date of Pronouncement: **06.12.2018**

Final Order No. 43053 / 2018

The appellant is a manufacturer of Parts of Fuel Injection Pumps and Parts of ATM Machines. The dispute relates to the period from June 2014 to May 2015.

2. The Revenue upon scrutiny of the appellant's CENVAT Credit documents noticed that the appellant had availed CENVAT Credit of service tax paid on Security Services, Renting of Immovable Property, CHA Services and Courier Services and that the same were received by the other units of the appellant; the appellant having not been registered as an Input Service Distributor (ISD), the input Credit was alleged to be ineligible. Accordingly, a Show Cause Notice dated 08.07.2015 was issued which culminated in the adjudication Order confirming the proposals and subsequently came to be upheld by the impugned Order-in-Appeal No. 293/2017 (CXA-II) dated 31.05.2017 by the Commissioner of Central Excise (Appeals-II), Chennai. The assessee feeling aggrieved by the same has filed the present appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Shri. S. Viswanathan appeared for the assessee and Ld. AC (AR) Shri. B. Balamurugan represented the Department.

4. I have considered the rival contentions, perused the documents placed on record and have also gone through the various decisions and also the Board Circular relied on during the course of arguments.

5.1 I note that the very same issue came up in the assessee's own case on an earlier occasion before this Bench and this Bench vide *Final Order No. 41078/2016 dated 24.06.2016* had thought it fit to remand the matter back to the file of the adjudicating authority on the doubt raised by the Ld. Department Representative as to the non-registration of the appellant as an ISD. I also note that after the above remand Order by this Bench, much water has flown and this issue has been laid to rest by the Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise Vs. Dashion Ltd. – 2016-TIOL-111-HC-AHM-ST* as well as the Hon'ble High Court of Rajasthan in the case of *Commissioner, Central Excise Commissionerate, Jaipur Vs. National Engineering Industries Ltd. – 2016-TIOL-922-HC-RAJ-CX*. Further, the CBEC has, in its wisdom, accepted the above decisions of both Hon'ble Gujarat as well as Rajasthan High Courts by observing that the non-registration of ISD was only a procedural irregularity for which substantial benefit of CENVAT Credit could not be denied when all the necessary records had been maintained by the respondent therein.

5.2 On a perusal of the impugned Order, I find that the Revenue has not disputed as to the maintenance of necessary

records, but the Credit is denied only because of non-registration of ISD.

6. Further, since this Bench has remanded the matter back to the file of the adjudicating authority in the assessee's own case (*supra*), I also deem it proper to remand this matter for fresh adjudication in the light of my observations as to later developments made hereinabove. In view of the Board's acceptance, however, there shall not be any penalty.

7. The appeal is partly allowed on the above terms.

(Pronounced in open court on 06.12.2018)

(P. Dinesha)
Member (Judicial)

Sdd