IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

ST/564/2011

(Arising out of Order-in-Appeal No. 141/2011 (M-ST) dated 24.08.2011 passed by the Commissioner of Central Excise (Appeals), Chennai).

CGST & CE, (Chennai North) : Appellant

Vs.

M/s. Pay Pal India Pvt. Ltd : Respondent

Appearance

Shri K. Veerabhadra Reddy, ADC (AR)
for the Appellant

Ms. Shilpi Jain, Advocate
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **14.02.2019**

FINAL ORDER No. **40337/2019**

Per Madhu Mohan Damodhar

The issue comes up for decision is whether refund of Cenvat credit can be allowed in respect of registered premises of service providers (respondent) from which the output services are exported; prior to registration. The refund claims filed by the respondent had been rejected by the adjudicating authority, for the period January, 2009 to March,2009, on the ground that the premises from where the export had been effected had not been registered at the time of export. In appeal, the Commissioner (Appeals) vide impugned order dated 24.08.2011 relying upon the decision of the Tribunal in M/s. *Textech International Pvt. Ltd. Vs. Commissioner of Service Tax* - Final Order No. 1184/2010 dated 04.11.2010, held that appellant is eligible for refund relating to the period prior to the date of registration. Aggrieved, Revenue filed this appeal.

2. Today when the matter came up for hearing, Ld. AR reiterated the grounds of appeal.

3. On the other hand, the Ld. Advocate submits that the issue is no longer res integra and had been decided in a number of cases including that of the Hon'ble High Court in *BNP Paribas Sundaram Global Securities Operations Pvt. Ltd.* – 2018- TIOL -1126-HC-MAD-ST, wherein it has been held that registration of assessee's premises is not a pre-requisite for claiming credit of refund under Rule 5 of CCR, 2004. She places reliance on the following case laws:-

i) CST, Chennai Vs. Cestat, Chennai
2017 (3) GSTL 45 (Mad.)

ii) *mPortal India Wireless Solutions Pvt. Ltd.*
2012 (27) STR 134 (Kar.)

iii) *CST, Chennai Vs. Verizon Data Services India Pvt. Ltd.* – C.M.A. No. 2667/2014 dated 22.06.2017

4. After hearing both sides, we find that the issue in dispute has been now decided in favour of the respondents vide case laws relied upon by the Ld. Advocate. We find that in a recent decision in *BNP Paribas Sundaram Global Securities Operations Pvt. Ltd,* the Hon'ble High Court of Madras, has interalia held that Rule 5 of CCR,2004, does not stipulate registration of premises as a necessary pre-requisite for claiming a refund. The Hon'ble High Court has reiterated their earlier decision in M/s. Scioinspire Consulting Services India Pvt. Ltd. and another – 2017-TIOL-798-HC-MAD-ST. Viewed in this light, no merit is find in the appeal of the department, for which reason the appeal is dismissed.

(Order dictated and pronounced in the open Court)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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