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

Appeal No.ST/624/2011

[Arising out of Order-in-Appeal No.140/2011 (MST) dt. 24.08.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of GST & CCE
Chennai South — Appellant

Versus

Pfizer Accelerated Solution Centre — Respondent

Appearance :

Shri S. Govindarajan, AC (AR)
For the Appellant

None
For the Respondent

CORAM :

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

Date of hearing / decision : 15.02.2019

FINAL ORDER No. 40370 / 2019

Per Madhu Mohan Damodhar

The facts of the matter are that respondents are a service provider under the categories of Business Auxiliary Service (BAS), Business Support Service (BSS) and Information Technology Software Service. Appellants had taken registration as providers of IT Software, BAS, BSS on 3.10.2008 in respect of services received prior to registration under cover of invoices, respondents had availed cenvat credit of the service tax charged thereon. However credit of service tax so availed remained unutilized since the they exported the services. Accordingly, the respondents filed refund claim for refund under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.5/2006-CE (NT) dt. 14.3.2006. Original authority rejected the refund claim on the ground that the claim pertained to the period before taking registration and hence respondents are not eligible to claim refund of such unutilized cenvat credit. In appeal, Commissioner (Appeals) vide impugned order dt. 24.08.2011 relying upon the case law of Tribunal decision in Textech International (P) Ltd. vide Final Order No.1184/2010 dt.04.11.2010 set aside the order of the original authority and allowed the appeal. Aggrieved, department is before this forum.

2. Today, when the matter came up for hearing, on behalf of Revenue, Ld. A.R Shri S. Govindarajan reiterated the grounds of appeal. None present for the respondents.

3. We find that the issue in dispute is no longer res integra and has been laid down to rest by a number of decisions and in particular the judgement 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. The issue also stands squarely covered by 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

Even in a recent decision in *BNP Paribas Sundaram Global Securities Operations Pvt. Ltd,* the Hon'ble High Court of Madras, has inter alia 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 found in the appeal of the department, for which reason the appeal is dismissed.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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