IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/00618, 00619/2011

[arising out of Orders-in-Appeal No.169 & 170/2011 (M-ST), both dated 19.09.2011 passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF SERVICE TAX, CHENNAI APPELLANT

Versus

M/s. FLEXTRONIC TECHNOLOGIES (INDIA) PVT. LTD. RESPONDENT

ST/MISC/40844/2017 and ST/00349/2012

[arising out of Order-in-Appeal No.53/2012 (M-ST), dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF SERVICE TAX, CHENNAI APPELLANT
(Presently known as ***"Commissioner of GST & Central Excise, Chennai (South) Commissionerate, Chennai"***

Versus

M/s. FLEXTRONIC TECHNOLOGIES (INDIA) PVT. LTD. RESPONDENT

Appearance:

For the Appellant Shri K.P. Muralidharan, AC (AR)
For the Respondent Shri Vignesh Srivastava, JC (AR)

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **18-12-2017**

FINAL ORDER NO. 43508-43510/2017

Per Archana Wadhwa:

The above miscellaneous application has been filed by the department seeking amendment to the cause title on the ground that the department is shown in the above appeal with jurisdiction of the Commissioner of Service Tax, Chennai, whereas now the same has been changed as **"The Commissioner of GST & Central Excise, Chennai (South) Commissionerate, MHU Complex, No.692 Anna salai, Nandanam, Chennai – 600 0035."**

2. Miscellaneous application for change of cause title is allowed.

3. These two appeals by Revenue are on the same dispute. The respondents were providing "Business Auxiliary Service" in the form of BPO activities. The services are exported. They have availed credit on various input services and filed refund claim of such credit lying unutilized in their books, under Rule 5 of Cenvat Credit Rules, 2004. The dispute in the present appeals is whether or not the respondents are eligible for such refund for input services on which credit is taken prior to the registration of the Unit with the department. Though, the original authority rejected the claim on this ground, the impugned order allowed it following the decision of the Tribunal in the case of *M/s. Textech International Pvt. Ltd.* vide *Final Order No.1184/2010, dated 04.11.2010*. The Tribunal held that when the appellants have exported the output service, they were not required to pay service tax and hence, there is no mandate for them to take registration compulsorily. The appellants cannot be denied refund on the ground of not taking registration earlier.

4. We note that the present appeals by the Revenue are only on the ground that the department filed appeal against the said decision of the Tribunal and the same was pending in the High Court.

5. We have heard both sides and perused the appeal records.

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and ST/00349/2012

6. We note that the grounds of appeal by the Revenue cannot be legally sustained. No contrary decision of higher forum has been placed on record. In fact, we note that Hon'ble Madras High Court in a similar matter in an order dated 10.04.2014 in CMA No.860 of 2017 upheld the view of the Tribunal that in the absence of statutory provision, prescribing that registration of the premises was mandatory for availing input service tax credit, the assessee could not be denied refund of unutilized credit on input services. Relying on the decision of Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd.* Vs. Commissioner of Service Tax, Bangalore reported in *2012 (27) S,.T.R. 134 (Kar.)* and Hon'ble Allahabad High Court in *Atrenta India Pvt. Ltd.* reported in *2017 (2) ADJ 590*, the Hon'ble Madras High Court held in favour of the assessee claiming refund.

7. In view of the above settled legal position, we find no merit in the appeals filed by the Revenue. The same are dismissed.

(Operative portion of the order pronounced in open court)

31.1.18

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
31-01-2018

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
26/02/18
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/CHENNAI