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

ST/40584/2017

[Arising out of Order-in-Appeal No.223/2016 (STA-II), dated 28.11.2016 passed by the Commissioner of Service Tax (Appeals-II), Chennai]

M/s. FLEMMINGS BPO PVT. LTD. APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI-II RESPONDENT

Appearance:

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

CORAM:

Hon'ble Smt. ArchanaWadhwa, Member (Judicial)

Date of hearing/decision **26-07-2017**

FINAL ORDER NO. 41460 / 2017

Per ArchanaWadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), assessee has filed the present appeals.

2. After hearing Shri S. Ramachandran, Cons. for the appellant and Shri S. Govindarajan, AC (AR) for the Revenue and perusing the records, I find the short issue required to be considered in the present appeal is as to whether Cenvat credit availed by respondent during the period when they were not registered with the service tax department is available to them or not and as a consequence, whether they are entitled to refund of the same in terms of the provisions of Rule 5 of Cenvat Credit Rules, 2004.

3. I find that the issue stand settled by the latest decision of the Hon'ble High Court of Madras in the case of *Commissioner of*

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Service Tax-III Vs SCIOinspire Consulting Services (India) Pvt. Ltd. vide **Final Order No.41373/2016, dated 05.07.2016**. The Hon'ble High Court has also considered the earlier decision of the Hon'ble Madras High Court in the case of *M/s. Sutham Nylocots*, which stands relied upon by Revenue in the present appeals and by distinguishing the same it stands held that the refund claim made by the assessee cannot be rejected on the ground that they were not registered with the concerned authorities during the period of dispute. As such, the issue stands finally decided by the Hon'ble High Court, I find no reason to sustain the impugned orders of Commissioner (Appeals).

4. Consequently, the impugned order is set aside and appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

2/8/17.

(ARCHANA WADHWA)
MEMBER(JUDICIAL)

ksr
02-08-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

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