

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41558 of 2013

(Arising out of Order-in-Appeal No. 102/2013 (MST) dated 19.02.2013 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

Commissioner of Service Tax

No. 2054, 'I' Block, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

: Appellant

VERSUS

M/s. Aricent Technologies (Holdings) Limited

Espee IT Park, Plot No. 5,
J.N. Salai, Ekaduthangal,
Guindy, Chennai – 600 032

: Respondent

APPEARANCE:

Smt. Anandalakshmi Ganeshram, Superintendent for the Appellant

Shri Mihir Mehta, Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40533 / 2023

DATE OF HEARING: 03.07.2023

DATE OF DECISION: 04.07.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the Revenue against the Order-in-Appeal No. 102/2013 (MST) dated 19.02.2013 passed by the Commissioner (Appeals), Chennai whereby the first appellate authority, having set aside the Order-in-Original No. 51/2009 (R) dated 31.12.2009, directed the grant of refund of unutilized input service credit under Rule 5 of the CENVAT Credit Rules, 2004.

2. Smt. Anandalakshmi Ganeshram, Ld. Superintendent appearing for the appellant, has contended as under: -

- The assessee-respondent was registered with the Department under Management Consultancy Service (MCS), Information Technology and Software Service (ITSS) and Business Auxiliary Service (BAS).
- The respondent filed two refund claims in Form-A for the refund of Rs.16,48,838/- and Rs.34,14,273/- under Rule 5 of the CENVAT Credit Rules, 2004, the amount being the unutilized input service tax credit availed towards the rendering of ITSS for the period from April 2008 to September 2008.
- The respondent was having registration with the Department as a provider of MCS from 29.08.2007 from their registered premises and they subsequently included ITSS on 25.06.2008.
- For the refund claimed for the period under dispute, the premises from where the services were exported was not registered with the Service Tax Department in terms of Notification No. 05/2006-Central Excise (N.T.) dated 14.03.2006.
- The refund claims were for the period from April 2008 to September 2008, a part of which was relating to the period when the new premises from where the ITSS was rendered was not registered with the Department.

3.1 *Per contra*, Shri Mihir Mehta, Ld. Advocate appearing for the respondent, submitted that the issue sought to be raised in the present appeal by the Revenue is no more *res integra* by virtue of the ruling of the very jurisdictional High Court of Madras and therefore requested for sustenance of the impugned order. He would also rely on the following decisions: -

- a. *mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore* [2012 (27) S.T.R. 134 (Kar.)]
- b. *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai* [2017 (3) G.S.T.L. 45 (Mad.)]
- c. *Commissioner of G.S.T. & Central Excise, Chennai v. BNP Paribas Sundaram Global Securities Operations Pvt. Ltd.* [2018 (6) TMI 676 – Madras High Court]
- d. *Commissioner of G.S.T. & Central Excise, Chennai v. Pay Pal India Pvt. Ltd.* [2020 (39) G.S.T.L. 261 (Mad.)]

3.2 He also invited our attention, in particular, to the decision in *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai (supra)* and specifically, to paragraph 7.1 wherein the Hon'ble High Court has reproduced Notification No. 05/2006-Central Excise (N.T.) and thereafter has ruled as under: -

"7.2 A bare perusal of the clause would show that insofar as the provider of output services is concerned, for making an application for refund of Cenvat credit, he is required to file an application in the prescribed form, i.e., Form A, which is annexed to the notification, and the said application is required to be made to the Deputy Commissioner of Central Excise, or, the Assistant Commissioner of Central Excise, as the case may be. Insofar as the jurisdiction of the concerned Officer is concerned, the same is fixed, in consonance with the location of the registered premises of the service provider, from which, the output service are exported. Furthermore, the application is required to be accompanied with a copy of the relevant invoices and a certificate from the bank, indicating therein, the realization of export proceeds.

7.3 Apart from the aforesaid, there is no limitation. **Clearly, the notification does not prohibit the grant of Cenvat credit, even, if, the premises are not registered. The fixation of jurisdiction of the concerned officer, to whom, an application is to be made, by correlating it, with the location of the registered premises, cannot, to our minds, by implication, be read in a manner that it obliterates the rights of the exporter of output services, to claim refund of Cenvat credit."**

(Emphasized in bold by us)

4. We find that the other decisions relied upon are on the same lines.

5. In view of the above decisions of various High Courts referred to *supra*, including the Hon'ble jurisdictional High Court, we find that the impugned order does not suffer from any legal infirmity.

6. Consequently, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Order pronounced in the open court on **04.07.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd