IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42349 of 2015

(Arising out of Order-in-Appeal No. 211/2015 dated 23.09.2015 passed by Commissioner of Service Tax (Appeals – I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. A.G.S. Health Private Limited **...Appellant**
No. 05-02, Tidel Park, No. 4,
Canal Bank Road,
Chennai – 600 113.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Tower, 2054/1,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Ms. Nimrah Ali, Advocate
For the Respondent : Ms. Anandalakshmi Ganehsram, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 11.07.2025
DATE OF DECISION : 15.10.2025

FINAL ORDER No. 41144 / 2025

Order:-

This Service Tax Appeal No. ST/42349/2015 has been filed by M/s. A.G.S. Health Private Limited (hereinafter referred to as 'Appellant') against Order-in-Appeal No. 211/2015 dated 23.09.2015 passed by the Commissioner Service Tax (Appeals-I), Chennai.

2.1 Briefly stated, the facts of the case are that the Appellant is an 100% export-oriented unit engaged in providing world class solutions (medical billing, patient demographics, insurance verification, medical coding, payment posting, accounts receivables) to a wide range of health care providers across multiple specialties within the United States. As the services rendered by the Appellant to the foreign clients qualify as export of service as per Rule 4 of the Export of Service Rules, 2005, no service tax was payable by the Appellant on its output services.

2.2 Since the Appellant was not liable to pay any Service tax, they did not get themselves registered with the Service tax Department. However, when, the pilot projects of the Appellant were successful and the customers in the United States agreed to enter into a contract with them, the Appellant chose to register themselves under the Service tax regime with effect from 17.12.2011.

2.3 In the course of providing the output services which are exported, the Appellant avails a host of input services on payment of Service tax. Although the Appellant did not get themselves registered with the Service tax Department before 17.12.2011, they were engaged in exporting the output services and availing CENVAT credit on the inputs used from 01.04.2011 onwards.

2.4 The appellant obtained Service Tax Registration on 17.12.2011 under the service categories of "Business Auxiliary Service" and "Business Support Service". They claimed refund under Rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR"] in respect of unutilized input service tax credit taken towards rendering services during the period April, 2011 to December, 2011.

3. The Original Adjudicating Authority rejected the refund claim of Rs.29,06,290/- on the grounds that the credit for the purpose of refund has to be reckoned from the date of Registration and that the credit attributable prior to 17.12.2011, the date on which they got themselves registered with the Department, cannot be considered for refund and has to be rejected.

4. The appellant preferred an appeal before the first appellate authority. The first appellate authority upheld the Order-in-Original No.123/2012 dated 22.06.2012 passed by the original authority and dismissed the appeal on the following grounds: -

i. In terms of Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 ("STR" for short) every service provider of a taxable service is required to take registration with jurisdictional Central Excise Office.

ii. Rule 3 of CCR states as "a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit ----". Thus, a taxable service provider has to get himself registered under the provisions of Service Tax to take CENVAT Credit.

iii. The output services should be exported only from the registered premises of the exporter and the refund claim has to be filed with the jurisdictional authority. The services rendered prior to registration of the premises of the appellant were not exported from the registered premises during the relevant period.

iv. The appellant is registered only on 17.12.2011 which is not in consonance with the provisions of Section 69 of the Act read with provisions of Rule 4(1) of the STR, thereby rendering themselves ineligible to claim refund of unutilized credit related to the period prior to registration.

5. The appellant has preferred the present appeal assailing the impugned order.

6.1 The Ld. Advocate Ms. Nimrah Ali appeared and argued for the appellant and submitted that the refund of the unutilized CENVAT Credit on the inputs used in the output service that are exported is governed by Rule 3 and Rule 5 of the CCR, 2004. Rule 3 of CCR, 2004 enables the appellant to avail CENVAT credit of the Service Tax paid on any input service received by the appellant. Further, as per Rule 5 of the CCR, 2004, the refund of such CENVAT Credit is allowed when the output service is exported without payment of service tax. Neither Rule 3, nor Rule 5 of the CCR, 2004 impose any condition prescribing that the registration of the premises is mandatory for availing such Cenvat Credit.

6.2 The Ld. Advocate further submitted that refund of Cenvat Credit cannot be denied in the absence of a statutory provision mandating the registration of the premises. She placed reliance on the following case laws to submit that the issue is no longer res integra and has been settled in favour of the appellant in a number of cases of the Jurisdictional High Court and Tribunal Chennai: -

i. *Mportal India Wireless Solutions Private Limited v. Commissioner of Service Tax, 2012 (27) S.T.R. (Kar.)*
ii. *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai and M/s. Scionspire Consulting Services (India) Private Limited, Chennai, 2017 (3) G.S.T.L. 45 (Mad.)*
iii. *The Commissioner of GST and Central Excise v. BNP Paribas Sundaram Global Securities Operations Private Limited, 2018 (2) TMI 1416-Madras High Court.*
iv. *The Commissioner of GST and Central Excise, Chennai v. Pay Pal India Private Limited, 2020 (7) TMI 321- Madras High Court.*
v. *The Commissioner of Service Tax, Chennai v. M/s. Saipem India Projects Limited, 2023 (6) TMI 544-CESTAT Chennai.*
vi. *Commissioner of Service Tax, Chennai v. M/s. AD2PRO Global Creative Solutions Private Limited, 2023 (5) TMI 1131-CESTAT Chennai.*

6.3 She averred that the impugned order has travelled beyond the Order-in-Original by placing reliance on Section 69(1) of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 to hold that only a registered service provider is entitled to claim refund of unutilized Cenvat Credit.

6.4 The Ld. Advocate argued that only a person who is liable for paying service tax is required to apply for registration and law does not mandate taking a registration in case of export of services. In this regard, she placed reliance on the judgment in the case of *Commissioner of Service Tax, Chennai vs. E-Care India Private Ltd. [2011 (22) S.T.R. (Tri. Chennai)],* which on appeal by the department was dismissed by the Hon'ble Madras High Court.

6.5 It was contended by the Learned Advocate that on the date of fling the refund claim, the appellant was duly registered with the Service Tax Department and the refund claim was filed with the jurisdictional authority only. Thus, the appellant has not violated any condition prescribed in the Refund Notification including condition No. 3 under Appendix to the Refund Notification which was adverted to in the Impugned Order to deny the refund of unutilized Cenvat Credit on account of non-registration of the premises.

6.6 Further the Ld. Advocate submitted that a bare perusal of the Refund Notification would show that it only sets out the procedure for claiming refund of unutilized Cenvat Credit and nowhere prohibits the grant of Cenvat Credit on account of non-registration of the premises. In this regard, she relied on the case of *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai* and *M/s. Scionspire Consulting*

Service (India) Private Limited, Chennai, [2017 (3) G.S.T.L. 45 (Mad.)].

7. The Ld. A.R. Ms. Anandalakshmi Ganeshram appeared for the Revenue and reiterated the findings of the original authority as well as the findings in the impugned order. She reiterated that as per 3(b) of Appendix 2 of Notification No. 5/2005-C.E. (NT) dated 14.03.2006 as amended issued under Rule 5 of CENVAT Credit Rules, 2004, "a provider of output service submit an application in Form-A to the Deputy/Assistant Commissioner as the case may be in whose Jurisdiction, the Registered premises of the Service Provider from which output service are Exported is situated……". Such being the condition for claiming a refund of Service Tax, the appellant had to get themselves registered for availing the benefit of getting refund. The appellant had not got themselves registered prior to 17.12.2011 and therefore, the credit pertaining to the period prior to 17.12.2011 was not refundable.

8. Heard both sides and perused the appeal records.

9. The very same issue of allowing accumulated CENVAT Credit for refund prior to registration was considered by the Tribunal in The Commissioner of Service Tax, Chennai Vs. M/s. Saipem India Projects Limited, which was decided against Revenue by placing reliance on the decision of coordinate Bench of the Tribunal in the case of *M/s. mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore [2012 (27) S.T.R. 134 (Kar.)].* The relevant paras read as under: -

> *"10.1 We find that the learned lower appellate authority has relied upon the decision in the case of M/s. mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore [2012 (27) S.T.R. 134 (Kar.)] on the issue of allowing accumulated CENVAT Credit for refund prior to registration. The relevant portion of the above decision is extracted below: -*
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> > *"7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."*
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> *10.2 In these appeals, the issue is relating to refund of CENVAT Credit accumulated in respect of the respondent's Cathedral Road Branch premises prior to centralized registration. We hold that the above decision is equally applicable to the facts of this case. Whether it be registration or centralized registration, when there is no mandatory provision in the Rules regarding registration, the CENVAT Credit cannot be denied."*

10. In view of the above judgments of this Tribunal, the issue is no longer res integra, as rightly argued by the Learned Advocate for the appellant by citing the above decisions in the case of M/s. mPortal India Wireless Solutions P. Ltd. v. Commissioner of Service Tax, Bangalore and The Commissioner of Service Tax, Chennai Vs. M/s. Saipem India Projects Limited. Therefore, I hold that the appellant is eligible for the refund of accumulated CENVAT Credit of Rs.29,06,290/- on exports attributable to the period prior to registration of the appellant with the Service Tax Department.

11. In view of the above findings, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 15.10.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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