IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

S. Tax Appeal No. 76672 of 2018

Arising out of Order-in-Appeal No.30/ST/BBSR-GST/2018 dated 20/02/2018 Passed by the Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. Semtech Advanced Systems India Pvt. Ltd.
Fortune Towers,
4th Floor Module B,
Chandrasekharpur, Bhubaneswar,
odisha, 751023 **Appellant (s)**

VERSUS

CCE & ST, BBSR
Central Revenue Building,
Rajaswa Vihar,
Bhubaneshwar-7, Odhisa

Respondent (s)

APPERANCE :

Shri N. K. Kothari, CA for the Appellant
Shri K. Choudhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
ORDER NO.FO/76587/2019

Date of Hearing : 19.11.2019
Date of Decision : 19.11.2019

PER P. K. CHOUDHARY :

Heard both sides and perused the appeal records.

2. I find that that the Adjudicating Authority has rejected the refund claim of the appellant assessee on two grounds that:-

(i) though the bills have been raised subsequent to 31/03/2014 but the services were rendered for the financial year 2012-13 and 2013-14 and during that period the assessee was not registered with the Service Tax Department.

(ii) Though the ground for rejecting the fund claim was that during the impugned period, the appellant assessee has shifted their establishment from Nirmal Plaza, 2nd Floor, 208 (A), Airport Road, Bhubaneswar to Fortune Tower, Chandrasekharpur, Bhubaneshwar on 01/01/2013 but the Adjudicating Authority has observed that even after shifting to new premises, the invoices have been issued mentioning their adduces of the old premises which is not acceptable and accordingly, he has proceeded to reject the refund claim.

3. I find that the issue is no more res-intigra in view of the judgment of Hon'ble High Court of Karnataka in the case of mPortal India Wireless Solutions P. Ltd. Vs. C. S. T. Bangalore reported in 2012 (27) S. T. R. 134 (Kar.)

The short question that was before the Hon'ble High Court for consideration was whether the authorities were justified in refusing to grant Cenvat Credit to which the assessee was legally entitled to on the ground that they were not registered with the Department. The Hon'ble High Court has held as under:-

> *"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 canot be sustained. Accordingly, it is set aside."*

The above ruling of Hon'ble High Court is squarely applicable to the facts of the present case.

4. Regarding the issue of mentioning of old address of the client's premises, the Ld. Chartered Accountant mentions that this is an inadvertent error and for this the appellant assessee should not be deprived of their legitimate claim.

5. The Ld. DR justifies the impugned order.

6. By respectfully following this judicial precedents, the first issue is answered in favour of the appellant holding that even though they were not registered prior to 13/05/2013, they are eligible for refund of the unutilized credit which was accumulated prior to registration.

Regarding the second issue, I agree with the submissions of the Ld. Chartered Accountant that error in mentioning old address is an inadvertent error and the appellant assesse should not be deprived of their legitimate claim on this account.

7. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential benefits.

(Dictated and pronounced in the open court)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Pooja