IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPLICATION No. ST/S/92979/17-Mum
APPEAL No. ST/87554/17Mum

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/98/2017-18 dated 5.6.2017 passed by Commissioner of Service Tax (Appeals-I), Mumbai)

Commissioner of GST, Mumbai Central **Appellant**

Vs.

Sequoia Capital India Advisors P. Ltd. **Respondent**

Appearance:

Shri Atul Sharma, Assistant Commissioner (AR), for appellant
Shri R. Kumaravel, Cost Accountant, for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 20.2.2018
Date of Decision: 20.2.2018

ORDER NO……………………………

The facts of the case are that the respondent claimed refund under Rule 5 before the adjudicating authority in respect of the accumulated cenvat credit. The original authority rejected the refund on the ground that the respondent has not obtained the service tax registration and not filed ST-3 return. Being aggrieved by the order-in-original, the respondent filed appeal before the Commissioner (Appeals) which came to be allowed on the basis of various judgments wherein it was held that obtaining the registration is not the requirement for sanction of refund under Rule 5. Therefore the Revenue is in appeal.

2. Shri Atul Sharma, learned Assistant Commissioner (AR) appearing on behalf of Revenue, reiterating the grounds of appeal, submits that since the respondent had not taken the registration, the correctness of availment of cenvat cannot be verified. Therefore, without the service tax registration, refund cannot be given.

3. On the other hand, Shri R. Kumaravel, Cost Accountant appearing on behalf of the respondent, submits that the issue is no longer *res integra* as various High Courts and Tribunal passed the judgments only for want of service tax registration, refund under Rule 5 cannot be rejected. He placed reliance on the following judgments:-

(i) *Commissioner of Service Tax-III vs. CESTAT – CMA No.860 of 2017* (decided by Hon’ble Madras High Court);

(ii) *Commissioner of Service Tax vs. Tavant Technologies India Pvt. Ltd. – CEA No.41 of 2015* (decided by Hon’ble Karnataka High Court).

4. On careful consideration of the submissions made by both the sides, I find that the limited issue to be decided is whether Rule 5 refund can be granted in absence of service tax registration. On perusal of the order-in-appeal, I find that

the learned Commissioner (Appeals) has allowed the appeal by relying on the judgment of the Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd. – 2012 (27) STR 134 (Kar.)* wherein it was held that service tax registration is not a condition precedent for obtaining refund under Rule 5. I agree with the findings given by the Commissioner (Appeals) as the issue has been consistently held in favour of the assessee in the judgment cited supra. Therefore, I do not see any error in the impugned order. The issue is no longer *res integra*. Hence the impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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