

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/86954/2014

(Arising out Order-in-Original No. 09/ST-II/RS/2014
dated 28.02.2014 passed by the Commissioner of
Central Excise & Service tax, Mumbai)

For approval and signature:
Hon’ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

IOT Design & Engineering Ltd. Appellant

Vs.

Commissioner of Service tax, Mumbai Respondent

Appearance:

Shri Neerav Mainkar, Advocate for the appellant
Shri S.R. Nair, EO (AR) for the respondent

CORAM:
Hon’ble Shri C J Mathew, Member (Technical)

Date of hearing : 21-05-2018
Date of decision : 21-05-2018

O R D E R No: A/86559 / 2018

The dispute arises from confirmation of demand of ₹40,70,231/- for 2008-2009 and 2009-2010 being recovery of CENVAT credit that was alleged to have been wrongly availed at the principal establishment, the only registered premises of the appellant, M/s. IOT (D&E) Pvt Ltd, against invoices pertaining to provision of input services at various branches that had not been registered. Commissioner of Central Excise & Service tax, Mumbai *vide* order-in-original no. 09/ST-II/RS/2014 dated 28th February 2014 held against the appellant on the ground that the different branches of the appellant that had not registered were not entitled to avail of CENVAT credit of taxes paid on the input services and hence transfer of this credit to the principal establishment was not correct in law. As pointed out by the Learned Authorised Representative, it is also clearly stated in the adjudication order that:

32. The demand pertains to the period 2008-2009 and 2009-2010. Admittedly during the relevant period, the notice had only one single premise registration and had not even applied for Centralised Registration. In other words, the noticee during the relevant period did not inform to the department that he provides taxable service from more than one premises or offices or more than one premises or offices are engaged in relation to provisions of taxable service. These facts are not under dispute. At this point of time, it is not possible for the department to verify that the services in respect

of the invoices relating to other premises or locations are services actually used by the notice for providing the taxable services from the registered premises.

2. Learned Counsel for appellant submits that they had registered their principal premise initially but did not apply for and obtained central registration for the branches in 2012. Pointing out that there is no allegation of failure to discharge tax liability on output services which could have led to denial of credit, he contends that the billings for all output service were being made from the single registered premises. He also pointed out that the show-cause notice was issued subsequent to the acquisition of registration and the failure to register could be considered only a procedural impediment.

3. Learned Authorised Representative contends that the issue is not one of adjustment of taxes paid on input services but was the substantive non-compliance with the provision of Service Tax Rules, 1994 which allowed assessee the privilege of central registration and with CENVAT Credit Rules, 2004 which permitted . According to him, the decision of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Coimbatore vs. Sutham Nylocots [2014 (306) ELT 255 (Mad.)]* has settled the issue. It is seen that the decision of the Hon'ble High Court of Madras, was rendered in the context of admitted duty

liability on the finished product that was not exempt with the assessee seeking benefit of MODVAT credit retrospectively. The facts in the present appeal clearly do not fit.

4. Learned Counsel has drawn attention to the decision of the Tribunal in *Manipal Advertising Services Pvt. Ltd. v. Commissioner of Central Excise, Mangalore* [2010 (19) STR 506 (Tri-Bang.)] and *Ketan Motors Ltd. v. , Commissioner of Central Excise, Nagpur* [2015 (39) STR 858 (Tri-Mumbai).]

5. Having perused the impugned order and the decision cited above, it would appear that issue is one of availment of CENVAT credit by the appellant at the principal establishment even though inputs and input services were received at unregistered premises. The finding of the adjudicating authority may have been acceptable had the branches been operating independently in rendering service and raising bills and, for some reason, had opt to transfer the credit of taxes on services to the main establishment. The branches, admittedly, were rendering services on behalf of the principal establishment in the absence of a contrary finding in the adjudication order or an allegation in the show-cause notice. There is nothing on record to indicate that tax liability was not being discharged on the taxable activity. There is no finding that the services procured were not used in the rendering of service.

Availment of CENVAT credit has not been objected to. Therefore, there is no reason to presume that the transfer of credit in accordance with the practice of centralised billing was violative of the provision for utilisation of credit.

6. In view of the above facts and circumstances, the impugned order is set aside and the appeal is allowed.

(Dictated in Court)

(C J Mathew)
Member (Technical)