

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

**Appeal No. ST/86636/2018**

(Arising out of Order-in-Appeal No. IM/CGST A-  
I/MUM/220/17-18 dated 26.02.2018 passed by the  
Commissioner (Appeals-I), CGST & CX, Mumbai)

M/s. Rishiroop Polymers Pvt. Ltd. Appellant

Vs.

CCGST, Mumbai South Respondent

Appearance:

Shri Rajiv Luthia, CA for the appellant  
Shri O.M. Shivdikar, AC (AR) for the respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 07.08.2018

Date of decision : 21.12.2018

**O R D E R No: A/88167/2018**

Denial of cenvat credit on service tax paid against unregistered premises taken on rent is the subject matter of this appeal.

2. Brief facts of the case is that appellant is a Private Ltd. Company engaged in manufacturing and providing services as commission agent for principals located outside India against which it receives commission charges in convertible foreign exchange. Appellant availed cenvat credit on

service tax paid on input services of renting of immovable property namely premises no. 67 at Atlanta, Nariman Point, Mumbai and premises no. 65. Input credit against premises no. 67 was refused as it was unregistered premises. After appellant was put to show-cause for availing such inadmissible credit and the matter was adjudicated upon up to the level of Commissioner (Appeals), this appeal has been preferred.

3. In his appeal memo and during the course of hearing of appeal, Id. Counsel Shri Rajiv Luthia for the appellant submitted that the said premises no. 67 was used as back office and there is no mandatory requirement of registration of all the premises of the company unless the same is a branch located outside the Head office. He further submitted that export of services of the appellant was tax free but as because appellant was also engaged in the manufacture of polymer compound and trading of synthetic rubber etc., vide another show-cause notice, corresponding to the same period, it was asked to reverse proportionate cenvat credit attributable to trading of goods in view of Rule 6(3) of the Cenvat Credit Rules 2004 and it did so. He strongly argued that when the department itself has asked for reversal of cenvat credit as per Rule 6(3) of Cenvat Credit Rules, it should not have refused credit on renting of premises. Referring to the orders-in-original passed in

respect of both the show-cause notices vide annexure 7 and 8, the Id. Counsel for the appellant also argued that principle of equity and fair play demand that the department should stick to its stand and not to jumble up different provisions in demanding duty from both the counts. Referring to judicial decision in the case of CST vs. Pangea 3 Legal Database Systems Pvt. Ltd. and order passed by this Tribunal on 02.08.2018 in respect of the same issue of the appellant for the subsequent period, the Id. Counsel for the appellant submitted that credit availed by the appellant against renting of unregistered premises was admissible for which he prays for setting aside the order of the Commissioner (Appeals).

4. In response to such submissions, Id. AR for the department has not only supported the reasoning and rationality of the order passed by the Commissioner (Appeals), but has brought the attention of the Court to Rule 4(2) of the Service Tax Rules, 1994 making it directory to register business premises. He further argued that it was rightly held by the Commissioner (Appeals) that unless service provider render taxable service from each of the premises and unless those premises are registered with the service tax department, no service provided from the said unit can be considered as output service. Since appellant had stated that it had used the same as back office for

which registration was not done, the Commissioner has rightly given his finding that cenvat credit for renting of such premises is not admissible for which he sought for no interference by this Court in the order of the Commissioner (Appeals).

5. Heard from both sides at length and perused the judicial decisions submitted by the adversaries and both the order-in-originals that arose from the same audit report findings. In the order-in-original concerning reversal of cenvat credit under Rule 6(3)(1), the adjudicating authority vide order dated 23.08.2016 in para 15 has given his finding that the assessee had not submitted any documentary evidence to support the claim that premises no. 67 is not used for providing exempted services or manufacturing activities and ultimately he confirmed the reversal of proportionate credit as demanded in the show-cause. If this is the finding of the adjudicating authority, it is not understood as to how, he being the same person in position passed another order just two days before on 23.08.2016 stating that renting of premises at unit no. 67 has no nexus with the output service which is provided by the assessee from unit no. 65. Admittedly, appellant has reversed the credit basing on Rule 6(3) of Cenvat Credit Rules in proportion to its dutiable and exempted services. This being the factual position and the documents on record, it

cannot be said that appellant is to be penalised twice by invoking alternate provisions of the statute. Rule 4(2) of Service Tax Rules, 1994 has nowhere stated that without such registration of units cenvat credit is not admissible except in case of input service distributors (ISD). In the instant case, appellant's premises appears to be one and same having different room numbers as throughout the case record, room number and premises number are used interchangeably. Further, in carrying forward the judicial precedent that has held the appellant's subsequent period of availment of cenvat credit against renting of premises number 67 as admissible, the following order is passed.

6. The appeal is allowed and the order passed by the Commissioner (Appeals) vide Order-in- Appeal No. IM/CGST A-I/MUM/220/17-18 dated 26.02.2018 confirming the order-in-original no. 13-14/ST-I/DN.VII/AC/COPY/2016-17 dated 23.08.2018 is set aside.

(Pronounced in Court on 21.12.2018)

**Dr. Suvendu Kumar Pati**  
**Member (Judicial)**