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

APPEAL NO: ST/87577/2018

Arising out of:	Order-in-Appeal No. SM/CGST/CX/Bhiwandi/ APP-68/17-18 dated 04/04/2018
Passed by:	Commissioner (Appeals), CGST & CX, Mumbai.

	Appellants – Represented by:
ABM Knowledge Ltd.	Shri Mahesh Raichandani, Advocate
versus	
	Respondent – Represented by:
CC, Mumbai Appeal-III	Shri O.M. Shivdikar, Assistant Commissioner (A.R.)

Date of hearing: 15/11/2018
Date of pronouncement: 12/02/2019

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Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/85280 / 2019

The instant Appeal has been filed from the order dated 04/04/2018 passed by Commissioner (Appeals), CGST & CX, Mumbai.

2. The issue involved in this matter is whether the appellant is entitled to avail the input credit on the invoices which are issued in the name of the premises other then the registered premises of the Appellant.

3. I have heard ld. Counsel for the appellant and ld. Authorised Representative for the revenue and perused the records. The Appellants are engaged in providing information technology service and the registered address of the Appellant is at Bandra and they are registered with the Service Tax Department. They availed Cenvat credit on inputs, input services and capital goods during the period 2010-11 to 2013-14 under the provision of Cenvat Credit Rules, 2004. The authorities below have disallowed the Cenvat Credit availed by the Appellant for the input service i.e. renting of immovable property service, on the ground that the invoices were issued in the name of the unregistered premises of the Appellant at Andheri and New Delhi. According to learned counsel appearing for the Appellant, not registering their office at Delhi or Andheri is a procedural lapse and substantive benefit cannot be denied on such procedural lapse and in support of his submission, the ld. Counsel relied upon the decision of the Hon'ble Karnataka High Court in the matter of *mPortal India Wireless Solutions (P) Ltd. Vs. Commissioner; reported in 2012(27) STR 134 (Kar.)*. He submitted that although the appellant has cited the same decision before the ld. Commissioner, which has been recorded in the impugned order, but there is no finding on the same. He further submitted that both the authorities below, while rejecting the claim of the Appellant, have gone beyond the scope of show cause notice and erred in holding that if the Appellant does not opt for centralized

registration, they were required to register the premises as "*Input Service Distributor*" under the provisions of the Service Tax (Registration of Special Category of Persons) Rules, 2005. According to the ld. Counsel, in the facts of the present case no penalty can be levied on the Appellant either under Rule 15(3) of Cenvat Credit Rules, 2004 or under Section 76/78 of the Finance Act, 1994. The ld. Authorised Representative reiterated the findings recorded in the impugned order and submitted that since the Appellant had availed input credit on such services of Renting in respect of unregistered premises, therefore the credit availed on such invoices deserved to be disallowed in view of Rule 9 of Cenvat Credit Rules, 2004.

4. It is not disputed that the appellants are having Service Tax Registration for a single premises i.e. their office at Bandra. However, they availed cenvat credit on input services viz., renting of immovable property service, pertaining to premises other than the registered premises i.e. for the premises at Andheri and New Delhi. It is also not the case of the Revenue that those two premises do not belong to the Appellant. The show cause notice issued to the Appellant did not dispute that the service in question is an input service which has been received, consumed and utilised by the appellants for providing taxable output service. It is the case of the Appellant that the service provider has paid the service tax to the credit of the central government after collecting it from the appellants. Therefore,

according to appellant the essential requirements for availment of input credit were satisfied. I have to decide whether the requirement of the registered premises is mandatory or otherwise.

5. I am surprise to find that on the aforesaid issue, although the decision of the Hon'ble Karnataka High Court in the matter of *mPortal India Wireless Solutions (P) Ltd. (supra)* has been referred by the ld. Commissioner in the impugned order as the submission of the Appellant, but there is no finding on that. The Adjudicating Authority or the Appellate Authority, as the case may be, are suppose to deal with each and every submission raised by the Appellant and when it comes to the decision of the Hon'ble Supreme Court/ High Court or of the Tribunal, they are bound to deal with the same. In the matter of *mPortal India Wireless Solutions (P) Ltd. (supra)* the question that arises for consideration of the Hon'ble High Court was whether the authorities were justified in refusing to grant Cenvat credit to which the assessee was legally entitled to, only on the ground that he is not registered with the department and the Hon'ble High Court while answering the question in favour of assessee, 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 cannot be sustained. Accordingly, it is set aside."*

6. The aforementioned decision of the Hon'ble High Court has been followed by the Tribunal from time to time . The rejection of refund claim on the ground of non-registration had come up before a co-ordinate Bench of the Tribunal in the matter of *Commr. Of S.T., Chennai vs. Scioinspire Consulting Services (I) P. Ltd.; 2017 (47) S.T.R. 188 (Tri.Chennai)* in which the Tribunal while relying upon the decision of the Hon'ble Karnataka High Court in the matter of *mPortal India Wireless Solutions (P) Ltd. (supra)* answered the issue in favour of the assessee and the relevant extract of the said order is as under:-

> *5. Heard both sides and perused the appeal records. Let me first take up the issue of denial of credit on the ground of non-registration of premises. I find that this issue has already been settled by the Hon'ble High Court of Karnataka in the case law relied upon by learned counsel in the case of mPortal India Wireless Solutions (P) Ltd. v. CST, Bangalore - 2012 (27) S.T.R. 134. The said Karnataka High Court's decision was followed by this very Bench vide Final Order Nos. 40917-40922/2016 [ST/40887 to 40892/2015], dated 9-6-2016 [2016 (45) S.T.R. 242 (Tribunal)] in the case of KLA Tencor Software India Private Ltd. v. CST, Chennai-III. The relevant paragraph of this Bench order is reproduced as under :-*
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> > *"7. With regard to issue (i), the contention of the appellant is that under Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994 registration under service tax legislation is required only for service providers who are liable to pay service tax and the appellant herein is predominantly engaged in the*

provision of export of service and therefore they are not liable to pay service tax and consequently not required to register with the department. The appellant has placed reliance on the judgment of Karnataka High Court in the case of mPortal India Wireless Solutions Pvt. Ltd. v. ST - 2012 (27) S.T.R. 134. The Hon'ble High Court at para-7 of its order has held as follows :-

> "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.*"

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

Another ruling that has been relied on by the appellant is that of Dorling Kindersley (I) Pvt. Ltd. v. CCE & ST, Noida (supra) which is also on the aspect of denial of refund claim on the ground of non-registration and the same was held to be unsustainable. Following these judicial precedents, the first issue is answered in favour of the appellant holding that even though they were not registered prior to 16-6-2008, they are eligible for refund of the unutilized credit which was accumulated prior to registration."

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8. As regards denial of refund on renting of immovable property service on account of non-registration of the premises, I find that the law is well settled. In the case of KLA Tencor Software Private Limited v. CST, Chennai (Final Order Nos. 40917-40922/2016, dated 9-6-2016), it was held that registration is not a mandatory condition to avail refund under the Notifications prescribed by placing reliance on the ruling of mPortal Wireless Solutions Private Limited v. CST, Bangalore - 2012 (27) S.T.R. 134 (Kar.). The ruling of CCE v. Sutham Nylocots - 2014 (306) E.L.T. 255, relied upon by the Revenue, is not applicable to the facts of the present case in as much as it was a case of classification/clandestine removal and credit based on registration is not a prescribed condition in terms of the exemption notification would not automatically entitle Cenvat credit. Since, the ruling of the Madras High Court is not applicable to the facts of the present case and that the ruling of the Karnataka High Court is more akin to the facts of the present case, the refund of Cenvat credit on renting of immovable property is allowed, follow the ruling of the Karnataka High Court.

9. Accordingly, I pass the following order:

(a) xxx

(b) As regards denial of refund on account of non-registration, department appeal is rejected.”

7. The aforementioned decision of the Tribunal was affirmed by the Hon’ble High Court of Judicature at Madras in the matter of *Commr. of S.T.-III, Chennai vs. CESTAT, Chennai; 2017 (3) G.S.T.L. 45 (Mad.).*

8. The learned Authorised Representative for the Revenue failed to point out any provision in the Cenvat Credit Rules which prescribes that registration of premises is a condition precedent for claiming Cenvat credit and in its absence the claim has to be rejected. There is

no such restriction in the Cenvat Credit Rules and in particular Rule 9 which has been relied upon by the Revenue. 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 entitle to the benefit of refund, both the authorities below have committed an error in rejecting the claim for refund on the ground which is not existence in law. There is no doubt that it is a beneficial provision and it is settled legal principle that any beneficial provision should be interpreted liberally. The Hon'ble Supreme Court in the matter of *Mangalore Chemicals & Fertilizers Ltd. Vs. Dy. Commissioner; 1991(55) ELT 437 (SC)* has laid down *that "there are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."* There is no dispute that lapse is there on the part of the Appellant but it is merely procedural lapse and due to that substantive benefit of Cenvat Credit cannot be denied to the Appellant. Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit wrongly taken. Since in view of the decisions cited above, I am of the view that the Appellant is entitle for input credit, therefore the said Rule 14 is not applicable on the facts of the case. So far as the finding of the ld. Commissioner in the were required to register the premises as "*Input Service Distributor*" (*ISD)* under the provisions of the Service Tax (Registration of Special Category of Persons) Rules, 2005, the same is undoubtedly beyond the scope of show cause notice, since there was no allegation regarding the violation of not taking registration as ISD either in the audit report or in the show cause notice.

9. In view of the above, the order passed by the ld. Commissioner (Appeals) is set aside and the Appeal filed by the Appellant is allowed.

(Pronounced in Court on ***12/02/2019****)*

(Ajay Sharma)
Member (Judicial)

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