CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 89076 of 2018

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/646/17-18 dated 28.03.2018 passed by the Commissioner of GST & Central Excise (Appeals-III), Mumbai)

M/s Vishay Semiconductor India P. Ltd. ....Appellant
Unit No. 23, SDF-I, SEZ-SEEPZ,
Andheri (East),
Mumbai-400096

VERSUS

C.C.G.ST., Mumbai Central ....Respondent
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel,
Mumbai-400012

APPERANCE:

Shri Dr. Shrikant Kamat, Advocate for the Appellant
Shri Sai Krishna Hatangadi, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86239 / 2019

Date of Hearing: 24.04.2019
Date of Decision: 15/07/2019

AJAY SHARMA:

The instant Appeal has been filed by the Appellant impugning the order dated 28.03.2018 passed by the Commissioner of GST & Central Excise (Appeals-III), Mumbai in Order-in-Appeal No. NA/GST A-III/MUM/646/17-18.

2. The dispute in the Appeal is the denial of refund of Cenvat Credit to the Appellant on the ground that the Appellant has received

the services in the premises which are not registered or in other words that the Appellant has not obtained centralized registration for all the units in the SEZ. The facts of the matter are that the Appellant is an SEZ unit engaged in the business of manufacturing and export of discrete semi-conductors and passive components (no domestic supply). They obtained *Non-Assessee Service Tax Registration* in respect of a unit No. 100, SDF-IV in SEEPZ, although they were having other units also located in the same SEZ unit. According to learned counsel for the Appellant while making the online application for Non-Assessee Registration, there was no provision to mention all the units/address of the company, therefore they mentioned only the postal address of the company. The Appellants filed the refund claim under *notification No. 9/2009-ST dated 3.3.2009* for the period January, 2011 to March, 2011 amounting to Rs.1,90,272/-. But the adjudicating authority vide Order-in-Original dated 31.8.2012 sanctioned the refund claim of only Rs.21,275/- in respect of the input service invoices raised on the registered premises only i.e. Unit No.100 only and rejected the refund claim of the balance amount of Rs.1,68,997/- towards other units which are also located in the same SEZ unit, only on the ground that those units were not registered. On Appeal filed by the Appellant, the learned Commissioner vide impugned order dated 28.3.2018 dismissed the Appeal filed by the Appellant.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records. It is not disputed that the refund claim of Rs.1,68,997/- was denied

to the Appellant only on the ground that the other units of the Appellant were not registered. It is nowhere disputed by any of the authorities below that all the units are part of the same premises/SEZ unit operating in the said SEZ area and that the service are wholly consumed for the authorised operations. It is also not disputed that the appellant has paid the service tax as well as availed the input services. The invoices shows the payment of service tax on such services. I have been informed that the same have been approved by the Development Commissioner vide letter dated 9.9.2009 and 6.11.2009 respectively. I have also been informed that there is no provision in the online application form to mention all the premises. According to learned counsel, the appellant is a manufacturer having totally export turnover and they do not have any domestic liability. They have obtained non-assessee registration from the department only for the purpose of filing refund claim in respect of the services on which service tax is paid by them and Cenvat Credit thereof is eligible. He also submitted that the appellant being a SEZ unit, their input services otherwise also are not taxable and the output service being 100% exported, no service tax is payable. According to me, the issue involved in the instant Appeal is no more *res integra*. In the matter of *mPortal India Wireless Solutions (P) Ltd. Vs Commissioner*; 2011-TIOL-928-HC-KAR-ST, a similar issue arises for consideration of the Hon’ble High Court of Karnataka 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."

4. 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. Time and again it has been repeatedly held by the Tribunal that no service tax can be levied on services provided to units situated in SEZ nothwithstanding anything contained in any notification. A combined reading of Section 51 of the SEZ Act read with Section 26 (1) ibid would clearly show that the services in the SEZ shall be exempted from payment of service tax. In my view, in the absence of a statutory provision which prescribes that registration is mandatory, the claim of the Appellant cannot be rejected. In a very recent decision of the Tribunal in the matter of

ABM Knowledge Ltd. Vs. Commissioner of Customs, Mumbai Appeal-III; 2019-TIOL-914-CESTAT-MUM, similar issue has been decided in favour of the assessee and it has been held that non-mentioning of registered premises on the invoice is only a procedural lapse. At the cost of repetition it is relevant to mention here that there is no dispute with respect to the receipt and consumption of input services within the SEZ. It is settled law that any beneficial provision should be interpreted liberally and for a mere procedural lapse, substantive benefit cannot be denied to the Assessee. Since in the instant matter it is only a procedural lapse therefore the same can be condoned.

5. Accordingly, in view of the discussions made hereinabove, the order passed by the ld. Commissioner (Appeals) is set aside and the Appeal filed by the Appellant is allowed with consequential relief, if any.

(Order pronounced in the open Court on 15/07/2019)

(Ajay Sharma)
Member (Judicial)

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