CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

ST/CROSS/ 86834/ 2018

Service Tax Appeal No. 88321 of 2018

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-023-18-19 dated 20-04-2018 passed by the Commissioner of Central Tax, Pune II)

Commissioner of Central Tax Pune II ....Appellant

GST Bhawan, 41-A
Sasson Road
Pune 411001.

VERSUS

ENTERCOMS SOLUTIONS (P) LTD ....Respondent
3rd Floor, NSG IT Park
Above Croma Showroom
ITI Road, Aundh
Pune-411007.

APPERANCE:

Shri Onil Shivadikar, Asst. Commissioner (AR) for Appellant
Shri Sachin Chitnis, Advocate for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO.. A/86732 / 2019

Date of Hearing: 24-06-2019
Date of Decision: 24-06-.2019

SUVENDU KUMAR PATI:

Confirmation of duty demand of ₹ 3,33,217/- towards recovery of inadmissible credits under Section 73 (1) of Finance Act 1993 along with interest and equivalent penalty by the adjudicating authority that was set aside by the Commissioner (Appeals-II), Central Tax, Pune in his order dated 20-04-2018 is assailed by the Revenue Department in this appeal.

2. Factual backdrop of the case is that during the course of audit it was observed that respondent had availed Cenvat Credit on input services received at its unregistered premises situated at 5^{th} Floor of the building while its 3^{rd} Floor premises was recorded as registered in ST-2 certificate. Those services include renting of immovable property, cleaning, housekeeping and security for the period prior to inclusion of the premises in the registration certificate w.e.f. 18-05-2016. Recovery of such credits alongwith interest and equal penalty was ordered by the adjudicating authority after the appellant was being called upon to show cause for such wrong availment. Appellant appealed against such adjudication order which went in its favour. Hence appeal by the Department. Cross appeal is also filed by the Respondent seeking confirmation of the order passed by the Commissioner (Appeals).

3. In the memo of appeal and during the course of hearing of the appeal, Learned Authorised Representative for the appellant Department Mr. Onil Shivadikar, Asst. Commissioner submitted that assessee had two distinct premises from where services are provided as output services and also received as input services for which it ought to have sought registration for the 5^{th} floor which remained unregistered upto 3 years from the date of its occupation for which adjudicating authority had rightly confirmed the demand on 3 grounds namely wrong

availement of Cenvat Credit on common input services, on services of 'renting of immovable property' in respect of un-registered premises and also availement of Cenvat credit on the basis of service invoices that contains no address. He has drawn attention of this Bench to Rule 3(1) of the Cenvat Credit Rules 2004, Rule 4 (a) of the Service Tax Rule and Rule 9(1) of the Cenvat Credit Rules to support the finding of the adjudicating authority and prayed to set aside the order passed by the Commissioner (Appeals) allowing the appellant to avail the inadmissible credit.

4. In response to such submissions, Learned Advocate Mr Sachin Chitnis for the respondent Company submitted that the disputed office situated at premises of 5th floor was incorporated in the registration certificate on 18-05-2016 which contains the same registration number that had been allotted to the premises situated in the 3rd floor for which the invoices were to be held as valid invoices as per Rule 9 of CCR 2004. He also submitted that Learned commissioner (appeals) in his detailed order has refered to the judicial precedent set in the case of *a) mPortal India – 2012(27)STR 134(Kar.), b) Imagination Technologies- 2011 (23)STR 661 (Try-Mum), and c) Curadev Pharma- 2017(7) GSTL 269(All.)* to held his findings in favour of the appellant. Referring to subsequent judicial decision of this Tribunal pronounced in the cases of

a) Rishiroop Polymers Ltd.-2019-TIOL-114-CESTAT-MUM,
b) Rishiroop Polymers Ltd. – 2018-TIOL-3146-CESTAT-MUM,
c) Allspheres Entertainment Pvt. Ltd – 2016 (41) STR 104 (T),
d) Toll (I) Logistics Pvt. Ltd – 2016 (41) STR 80 (T),
e) Prudential Process MGMT Services – 2016 (42) STR 764 (T)

and he also argued that credit cannot be denied solely for the reason for not obtaining service tax registration for additional unit for which he sought no interference in the order passed by the Commissioner (Appeals) by this Tribunal.

5. Perused the case record, of the order passed by the Commissioner (Appeals) and the relevant case laws referred therein and relied upon by the parties. As found from the order passed by the Commissioner (Appeals), he had opined that since the adjudicating authority had no dispute on the utilisation of credits by the appellant as input services for providing output service and only dispute on the fact of non-registration of other premises of the respondent, proviso to sub-Rule (2) of Rule 9 would be squarely applicable in the case of appellant. The said proviso reads;

> *Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [4][assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be], name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit]*

He then observed as follows;

> *On going through the above proviso to sub rule (2) of Rule 9 of CCR, 2004 I notice that the Ld. Adjudicating authority has not disputed the claim of the Appellant that all the input service invoice were in their name, which were used for providing output service and the Cenvat Credit in respect of these input service invoice was availed only after following the due procedure, therefore I am of the view that as the input service invoice are in Appellant's name, which has been received by them and the same has been duly accounted for in their books of accounts, hence I hold that Appellant are*

eligible to avail the Cenvat Credit in respect of all the 'input service invoice' where the Cenvat Credit has been denied on the ground that the address on the input service invoice does not match with the address in the registration certificate issued by the department in ST-1 & ST-2 Form. I also find that the admissibility/eligibility of Cenvat Credit and incorporation of correct address in the Registration certificate are two different issues and once it is determined that the input service has been received and utilized for providing output service by the Appellant, the Cenvat credit on such input service is admissible and it makes no difference if the address of the Appellant is wrong or missing in the invoice.

6. I find no irregularity in the reasoned order of the Commissioner (Appeals) as discussed in the preceding para. Further as has been consistently held by this Tribunal in several decisions relied upon by the appellant as referred above and as Rule 4 (2) service tax Rule had not expressly stated that Cenvat Credit is not admissible without such registration of units, there is no reason to depart from the judicial president set by this Tribunal which has been consistently in favour of allowing Cenvat Credit utilised for such other unit/premises of a registered service provider. Hence the order.

ORDER

7. The appeal is dismissed and order No. PUN-CT-APPII-000-023-18-19 dated 20-04-2018 passed by the Commissioner of Central Tax, Pune II is hereby confirmed. Cross objection is also disposed of accordingly.

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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