CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.88747 of 2018

(Arising out of Order-in-Appeal No.MUM/DGPM/WRU/APP-229/17-18 dated 31.05.2018 passed by the Commissioner (Appeals I), Central Tax, Mumbai

M/s Visible Alpha Solutions India Pvt Ltd. **.... Appellant**
306-308 B Wing, Commercial Complex
Kirol Road, LBS Marg, Kurla West
Mumbai 400070

Versus

Commissioner of C.G.ST-Mumbai East **.... Respondent**
9th Floor, Lotus, Lotus Infocentre
Parel East
Mumbai 400012.

With

Service Tax Appeal No. 88751 of 2018

(Arising out of Order-in-Appeal No. MUM/DGPM/WRU/APP-229/17-18 dated 31.05.2018 passed by the Commissioner (Appeals I), Central Tax, Mumbai

M/s Visible Alpha Solutions India Pvt Ltd. **.... Appellant**
306-308 B Wing, Commercial Complex
Kirol Road, LBS Marg, Kurla West
Mumbai 400070

Versus

Commissioner of C.G.ST-Mumbai East **.... Respondent**
9th Floor, Lotus, Lotus Infocentre
Parel East
Mumbai 400012.

Appearance:

Shri Tushar R. Shah, Chartered Accountant for the Appellant

Shri Sudhir B. Mane, AC., Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87246-87247/2019

Date of Hearing: 07.08.2019
Date of Decision: 04.12.2019

Per: Mr. P. Anjani Kumar

Heard both the sides and perused the records of the case.

2. Briefly stated the facts of the case are that the appellants are engaged in the provision of BPO services and avail services like business auxillary services, manpower recruitment/supply against the services, legal consultancy services, rent-a-cab services, security and detective agency services etc. The appellant filed 2 refund claims for Rs.4,58,139/- for the period April 2015 to June 2015 and Rs.6,75,237/- for the period July to September 2015 under Rule 5 CENVAT Credit Rules, 2004, read with Notification No.27/2002. These refund claims came to be rejected by the Assistant Commissioner vide orders dated 28.10.2016 and 10.01.2017. The appeals filed by the appellants were rejected by Commissioner (Appeals). Hence, these appeals.

3. Learned Counsel for the appellant submits that major portion of the refund claim was rejected due to the fact that the appellants have not obtained registration; learned counsel submits that it has been held in so many cases that registration is not a prerequisite for granting refund. He relied upon the following cases:

i) mPortal India Wireless Solutions Pvt.Ltd. 27 S.T.R.134 (Kar.)

ii) Tavant Tehnologies India Pvt.Ltd (430 S.T.T. 57 (KR).

iii) E.T-Care India Pvt.Ltd (52)S.T.R 246 (Madras)

He further submitted that in their own case refund for the quarter October to December 2015 has been granted through registration was obtained on 14.12.2015.

4. Learned counsel further submits that the impugned order also seeks to reject refund claims in respect of catering services, general insurance services and rent-a-cab services; he submits that these services are necessary for a BPO Company; the appellants have to provide food to employees to ensure prompt and efficient output service; as the appellant operates 24 X 7 it is necessary to provide pick-up and drop facility for the employees; these are held to be eligible input services vide Board Circular 120/01/2010-ST dated 19.01.2010.

5. Learned Counsel further submits that General Insurance service was obtained to cover medical insurances of employees and their dependents ; the services held to be eligible in the following cases:

i) Excel Technology (37) S.T.R. 716 (ALL)

ii) PTC Software (India)Pvt.Ltd (35) S.T.R.632 (TRI-MUM)

iii) BNY Mellon International Operations (India) P.Ltd. (45) S.T.R. 116 (*TRI-MUM)

6. In respect of Hotel and leisure i.e. Recreation services, learned counsel submits that the employees are served food and beverages and as it is towards keeping the employees of the company in good condition and to allow them to relax; therefore the same cannot be denied.

7. The learned AR for the department reiterated the findings of the OIO and OIA and submits that Tribunal in the case of Runjhun Associates 2017, (52) S.T.R.133 (Tribunal Delhi) has rejected the refund claim in similar conditions. AR has also relied upon

i) Amnet Systems Pvt Ltd. 2017 (50) S.T.R. 159 (Tri Chennai).

ii) Salora International Ltd. 2017 (47) STR 177 (Tri-Delhi)

iii) Focus MT (India) Pvt.Ltd 2011 (21) STR 572(Tri Bangalore)

8. I find that the contentions raised in the impugned OIOs are no longer Res Integra. I find that the issue of eligibility of Cenvat refund has been decided in favour of the Appellant by this Tribunal, this bench and other benches. Though the learned AR has cited a few cases decided by the co-ordinate bench at Delhi we find that Karnataka High Court has decided the issue in favour of the Appellant no contra

judgement of any other high court has been placed before me. Therefore I find that the issue is settled in favour of the appellants . Regarding the other issues like general insurance etc., the refund of credit which was sought to be denied to the Appellant I find that the case is squarely covered by the ratio of the cases mentioned by the appellant. Moreover the services are very much required for continuation of the appellants as a BPO and nothing has been brought on record to say that this have been availed for any other purposes than their business activities. Under the circumstances I have no hesitation to hold that the said services are also eligible for Cenvat credit and consequently l for the refund of the same.

9. In view of the above both the appeals are allowed by setting aside the impugned OIA with consequential reliefs, if any, as per law.

(Pronounced in Open Court on 04.12.2019)

(P. Anjani Kumar)
Member (Technical

Sasi

)