CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86615 of 2015

[Arising out of Order-in-Original No: 01/ST-VII/RS/COMMR/2015-16 dated 20th April 2015 passed by the Principal Commissioner of Service Tax -VII, Mumbai.]

Tata Business Support Services Ltd
4th Floor, Tower 'B', I – Think Techno Campus,
Off Pokhran Road No. 2, Adjacent to TCS Yantra Park
Thane West – 400 607 ...***Appellant***

versus

Commissioner of Service Tax - VII
Central Excise Building, 115 MK Marg,
Churchgate, Mumbai – 400020 ***...Respondent***

APPEARANCE:

Shri SS Gupta, Chartered Accountant for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87554 / 2019

DATE OF HEARING: 28/08/2019
DATE OF DECISION: 28/08/2019

PER: C J MATHEW

In this appeal, M/s Tata Business Support Services Ltd challenges order-in-original no. 01/ST-VII/RS/COMMR/2015-16 dated 20th April 2015 of Principal Commissioner of Service Tax-VII, Mumbai which has disallowed CENVAT credit of ₹ 1,94,91,562, by invoking rule 14 of CENVAT Credit Rules, 2004 read with section 73 of Finance Act, 1994 for having been availed, without eligibility, between 2nd August 2007 and 4th February 2009, along with appropriate interest under section 75 of Finance Act, 1994, besides imposing penalty of like amount under section 78 of Finance Act, 1994. The appellant is before us for the second time and the present appeal is a consequence of *de novo* proceedings following remand of the matter back to the adjudicating authority. The show cause notice, initiating the proceedings following audit of the appellant, had also proposed disallowance of another ₹ 1,22,16,154 pertaining to the period from 4th February 2009 to 1st July 2009 which was dropped in the impugned order.

2. The amount proposed for recovery represented the credit availed on tax borne on services that were procured at the premises that was included only on 1st July 2009 in the registration certificate issued under rule 4 of Service Tax Rules, 1994. The appellant, then operating under the name and style of M/s E Nxt Financials Ltd before its amalgamation, had shifted from their registered address at Thane to their new premises at Deonar in December 2006 but sought registration only on 5th February 2009 though business was being carried on all the while.

3. From the disposal effected by the adjudicating authority, it would appear that, in addition to relying upon the report of the jurisdictional official that the activities of the appellant, at the new address, were not within the knowledge of the tax authorities and the two other reasons adduced therein, *viz.*, that there was insufficient material for the jurisdictional official to conclude that the services had been received and consumed for rendering output service and that claim of eligibility based upon centralised registration was not tenable, the terms of remand order of the Tribunal had been misconstrued. This has been pointed out to us by Learned Chartered Accountant appearing for the appellant. He also submits that the irrelevance of registration for eligibility to avail CENVAT credit, settled by the Hon'ble High Court of Karnataka in *mPortal India Wireless Solutions P Ltd v. Commissioner of Service Tax, Bangalore [2012 (27) STR 134 (Kar)]*, was followed in several decisions of the Tribunal and relied upon by Hon'ble High Court of Madras in *Commissioner of Service Tax-III, Chennai v. CESTAT, Chennai [2017 (3) GSTL 45 (Mad)]* and by the Hon'ble High Court of Allahabad in *Commissioner of Service Tax, NOIDA v. Atrenta India Pvt Ltd [2017 (48) STR 361 (All)].*

4. Learned Authorised Representative, drawing upon the finding of the adjudicating authority, contended that the appellant was unable to comply with the terms in the remand order that the jurisdictional

official be enabled to satisfy himself about consumption of the 'input services' and that the obligation entailed by rule 9 (1) of CENVAT Credit Rules, 2004 was not fulfilled.

5. It is not in doubt that the appellant had not included the Deonar premises in the registration which continued with the Thane location. At the time of the original adjudication, the decision in *re mPortal India Wireless Solutions P Ltd* did not appear to have been available to guide the outcome. From the record of proceedings before the Tribunal on the previous occasion, it would appear that this decision was not placed for consideration then. Not unnaturally, after taking note of the CENVAT Credit Rules, 2004, the Tribunal was inclined to refer the matter back to the original authority for ascertainment of utilisation of the 'input service' by the assessee as a feasible alternative. The adjudicating authority appeared to have concluded from this that the issue of relevance of registration was not in question any longer and that process of enquiry prescribed in rule 9 of CENVAT Credit Rules, 2004 was to be undertaken for its own sake. In our opinion, nothing could be farther from the intent of the direction of the Tribunal.

6. Rule 9 of CENVAT Credit Rules, 2004 is to be read in conjunction with rule 3 and definition of 'input service' in rule 2 of CENVAT Credit Rules, 2004. The entitlement to avail and take credit

of taxes included in the value of ‘input service’ deployed for providing ‘output service’ against prescribed documentation is enabled by rule 3 of CENVAT Credit Rules, 2004 without reference to, or permission from, jurisdictional officials; in the event of such documentation being incomplete, from the point of view of the jurisdictional officials, subjective satisfaction of receipt and the deployment can affirm availment. Impliedly, the want of such satisfaction empowers the jurisdictional officials to proceed with denial of credit as having been wrongly availed. It was in this context that the Tribunal required that the process be undertaken before the appellant herein was denied eligibility for credit on the technical ground of non-registration. In effect, the Tribunal had discarded the ground of non-registration as irrelevant to availment of credit.

7. Registration of ‘person liable to pay the service tax’ is mandated by section 69 of Finance Act, 1994 read with rule 4 of Service Tax Rules, 1994 prescribing the procedures thereof. It does not, as an essential qualification for availment of credit, prescribe that that the recipient be registered. Undoubtedly, with the eligibility to avail credit being restricted to providers of ‘output service’, it is but natural that any assessee availing credit would, normally, be registered. However, such registration is not mandated in CENVAT Credit Rules, 2004 which is a legal framework to operationalise the scheme for setting off taxes/duties to obviate the cascading effects of

taxation and, except for relying upon the general power, under section 94 of Finance Act, 1994, to frame rules, is independent of Service Tax Rules, 1994 and Finance Act, 1994 save for the expression 'in such manner' in section 68 of Finance Act, 1994. Availment of credit is, thus, contingent only upon compliance with the scheme embodied in CENVAT Credit Rules, 2004.

8. In *re mPortal India Wireless Solutions P Ltd*, the issue before the Hon'ble High Court of Karnataka was not the entitlement for refund or to avail credit of tax discharged merely because exports were not taxable as the Tribunal had held in favour of the appellant these aspects but the disinclination to

> *'3……. grant any relief on the ground that the Cenvat scheme is available only to an assessee registered with the Department....*
>
> *4. Therefore, short question that arises for consideration is, whether the authorities were justified in refusing to grant Cenvat credit to his the assessee was legally entitled to on the ground that he is not registered with the department.'*

which was held to be untenable thus

> *'7. Insofar as the 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 the registration is mandatory and that such 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 and in law...'*

9. There could be no clearer exposition of the legal provision that militates against the ground on which proceedings were initiated against the appellant herein. It was open to the jurisdictional officials to establish that the impugned services were not 'input service' within the meaning of the rule 2 of CENVAT Credit Rules, 2004. It is not for the provider of 'output service' to satisfy the jurisdictional official but for the jurisdictional official, on the basis of ascertainment, to satisfy itself on the deployment of such service and to initiate proceedings in the absence of such satisfaction. Neither does the show cause notice adduce any evidence of that and nor did the jurisdictional official do so under the latitude afforded by the direction in the remand order of the Tribunal. The sweeping assertion of non-existence merely owing to non-registration is not dissimilar to the symbolic discountenancing by Pontius Pilate that relegated him to a mere footnote in history. In the absence of express articulation of lack of satisfaction, rule 9 of CENVAT Credit Rules, 2004 does not come to the assistance of Revenue.

10. It is, indeed, surprising that the adjudicating authority appeared to have blindsided itself to the ostensible obligation of the appellant to

register its new premises before entitling themselves to privileges. The consequent overlooking of substantive compliance by discharging tax liability on 'output service', remaining unchallenged in the proceedings and, indeed, found to be acceptable is demonstrative of the rigid 'technical construing' that is in breach of public interest by contributing to cascading effects of taxation. The acknowledgement of due discharge of tax liability on 'output service' for which the impugned services were procured and, in the absence of evidence to the contrary, deployed suffices to entitle the appellant under the scheme of CENVAT credit.

11. The irrelevance of registration for the privilege of availment of CENVAT credit is now settled law. There is no evidence that the impugned 'input services' were not utilised for the provision of output services. The denial of credit, therefore, does not find sustenance of law.

12. Accordingly, the impugned order to set aside and appeal allowed.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*