CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86036 of 2019

(Arising out of Order-in-Appeal No. MKK/474-477/RGD-APP/2018-19 dated 13.02.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh.)

M/s Radius Corporate Solutions India Pvt. Ltd. ....Appellant
7th Floor, HC Building, Tower-C,
LBS Marg, 247 Park,
Vikhroli (West), Mumbai -400 083

VERSUS

Commissioner of CGST, Navi Mumbai ....Respondent
10th Fllor, Satra Plaza,
Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai – 400 705

WITH

Service Tax Appeal No. 86040 of 2019

(Arising out of Order-in-Appeal No. MKK/474-477/RGD-APP/2018-19 dated 13.02.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh.)

M/s Radius Corporate Solutions India Pvt. Ltd. ....Appellant
7th Floor, HC Building, Tower-C,
LBS Marg, 247 Park,
Vikhroli (West), Mumbai -400 083

VERSUS

Commissioner of CGST, Navi Mumbai ....Respondent
10th Fllor, Satra Plaza,
Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai – 400 705

AND

Service Tax Appeal No. 86042 of 2019

(Arising out of Order-in-Appeal No. MKK/474-477/RGD-APP/2018-19 dated 13.02.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh.)

M/s Radius Corporate Solutions India Pvt. Ltd. ....Appellant
7th Floor, HC Building, Tower-C,
LBS Marg, 247 Park,
Vikhroli (West), Mumbai -400 083

VERSUS

Commissioner of CGST, Navi Mumbai ....Respondent
10th Fllor, Satra Plaza,
Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai – 400 705

APPERANCE:

Shri Gopal Mundhra, Advocate for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85224-85226/2022

Date of Hearing: 11.01.2022
Date of Decision: 25.03.2022

Denial of CENVAT credit by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh on renting of immovable property for want of registration and on other input services for absence of nexus is assailed in these appeals.

2. Facts of the case, in a nutshell, is that Appellant is engaged in export of 'Business Support Services' like Accounting, Human Resources and Advisory services to overseas client and for the period from October, 2014 to March, 2016 CENVAT credit on renting of immovable property, Restaurant services, Accommodation services, General Insurance & Auxiliary services, Photography services, Air Travel Agent, Maintenance and Repair Service and Telecommunication service were held to be non-admissible, for which refunds sought by Appellant were denied to it. Those orders attain finality in the appeal preferred by the Appellant before the Commissioner (Appeals).

3. During the course of hearing of this appeal learned Counsel for the Appellant Mr. Gopal Mundhra submitted that CENVAT credit could not be denied to unregistered premises, if services were provided from that immovable property and there is plethora of decision available on such issue. In view of the decisions in the case of *ABM Knowledge Ltd. Vs. Commissioner of Cus. (Appeals), Mumbai-III [2019 (27) GSTL 694], EXL Service.com Private Limited Vs. Commissioner of C.Ex. & Cus., Noida [2016 (43) STR 294 (Tri-AII)], The Commissioner of GST & Central Excise, Chennai Vs. Bnp Paribas Sundaram Global Securities Operations Pvt. Ltd. [2018 (6) TMI 676-MADRAS HIGH COURT], mPortal India Wireless Solutions (P) Ltd. [2012 (27) S.T.R. 134 (Kar.)], Commissioner of Service Tax Commissionerate, Noida V. M/s Atrenta India Pvt. Ltd, Noida [2017(48) S.T.R. 361 (All.), Commissioner of Service Tax, Bangalore*

Vs. Aviva Global Services (Bang.) P. Ltd. [2014 (6) TMI 390-CESTAT, BANGALORE], it has become a settled principle of law that such pre-condition cannot be imposed for refund of CENVAT credit since CENVAT Credit Rules, 2004 had not stipulated any such condition. He also cited case laws of *Caroro Technologies India Private Limited Vs. Commissioner of Central Excise, Pune-III [2015 (39) STR 673 (Tri-Mumbai)], M/s. Rr Donnelley India Outsource Pvt. Ltd. Vs. the Commissioner of G.S.T & Central Excise, Chennai Outer Commissionerate [2019 (1) TMI 1244-CESTAT CHENNAI], M/s. St-Ericsson India Private Ltd. Vs. Commissioner of Central Excise, Noida [2017 (10) TMI 1123- CESTAT ALLAHABAD],* to establish that CENVAT credit is also admissible on premises that had been registered subsequently.

4. While relinquishing Appellant's claim on refund against CENVAT credits accrued in its favour towards Maintenance and Repair service, Telecommunication service and other services as the amounts were too meger, he pointed out that for the rest of the services like Accommodation services, Photography services, Air Travel Agent, General Insurance & Auxiliary services the grounds of rejection stated in the Orders-in-Original and Order-in-Appeal were primarily of none establishment of nexus between input services and output services despite the fact that post amendment of Rule 5 w.e.f. 01.04.2012 had clearly stated about no such requirement that was also clarified after the budget Circular and therefore Appellant is eligible to get refunds on credits taken on those services, for which

the order passed by the learned Commissioner (Appeals) is required to be set aside.

5. In response to such submissions learned Authorised Representative for the respondent-department Shri Saikrishna Hatangadi, while supporting the reasoning and rationality of the order passed by the learned Commissioner (Appeals), argued that Appellant had taken components of input service which were clearly specified in the exclusion clause of the CENVAT Credit Rules, 2004 and learned Commissioner had examined the invoices as well as given his findings to the effect that invoices failed to establish that those input services were availed by the Appellant for business purposes. In citing judicial decisions in the case of *Broadbridge Financial Solutions India Pvt. Ltd. Vs. Commissioner of Central Tax, Hyd. – [2019-TIOL-3052-CESTAT-HYD], AET Laborataries Pvt. Ltd. Vs. CCE, Customs & ST, Hyderabad [2016 (42) STR 720 (Tri.-Bang.)], Wipro Ltd. [2018 (363) ELT 1111 (Tri.-LB)], Commissioner of Central Excise, Ahmedabad-II Vs. Cadilla Health Care Ltd. [2013 (30) STR 3 (Guj.)]*, he also submitted that when those services were purely placed in the exclusion clause for which refund was rightfully denied, interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

6. I have perused the case record and found that denial of credit on renting of property was denied by the Commissioner (Appeals) by referring to the invoices, in which 3 different address are mentioned

(para 6.1 at page 3 of his order) apart from the registered address at 7th Floor, Tower C, LBS Marg, Vikhroli (West). Learned Counsel for the Appellant took strain to explain that those invoices were raised in the Appellant's company old name and both Ms. Kavita S. Nichani as well as Ms. Jharna V Narang, whose names appear in the invoices, were landladies. He also pointed out that Order-in-Original at page 26 of the appeal memo in its first line referred the earlier name of the Appellant company and the same is found reflected in the fixed assets statement of the Appellant company at page 171 of the appeal memo that clarifies name of the Appellant company *vis a vis* its previous name (formerly known as Nair & Co Corporate Solutions Pvt. Ltd.). Likewise sample invoice at page 104 of the additional submission indicates that Ms. Jharna V Narang as the landlady had issued the same, in which her own address and Appellant's address are separately mentioned. I have, therefore, got no hesitation to hold that the invoices raised are in the name of the Appellant that has been disputed by the Commissioner (Appeals) in his order.

7. Concerning availment of CENVAT credit on those 3 other premises which were either not registered or got registered subsequent to filing of refund application for which credit was denied with consequential rejection of refund, it can be said that the issue is no more *res integra,* in view of plethora of decisions already pronounced on the issue including those referred above and relied upon by the Appellant.

8. In respect of rest of CENVAT credits against which refund was denied to the Appellant, it is to be seen if those are infect excluded from the purview of input service and falling within the definition of 'Exclusion Clause'. In this context I would like to reproduce a paragraph of my own order passed in M/s Hawkins Cookers Ltd. on dated 19.03.2021 that reads:

> *"(c) In the definition of input service as introduced w.e.f. 01.04.2011, certain exclusions are provided under its sub clauses but as can be read from the definition reproduced above, those are not absolute exclusion but are conditional exclusions that has a link to specific purpose of availment and in the context of the issue under dispute before this Bench, it remains confined to sub Clause (c) on the categories namely outdoor catering service, travel benefit, membership of club etc., which when used primarily for personal use or consumption by the employees are to be excluded from availment of credits on those expenditures by the manufacturer. To put it in another way, outdoor catering or club membership or travel expenses as such would not disentitle a manufacturer to avail CENVAT credits on those expenses unless it fails to establish that those were not used primarily for the employees personal use or consumption. It is in this background that item wise rejection of CENVAT credit by the Commissioner (Appeals) is to be discussed."*

9. Going by the relevant portion of learned Commissioner (Appeals) order at page 5 under para 6.4, it can be seen that he had denied refund primarily on 3 grounds namely (i) there was no nexus with output service; (ii) some of the invoices produced by the Appellant failed to provide sufficient evidence to the effect that the services covered in the Exclusion Clause were taken for the purpose of business to bring those into the category of input service; and (iii)

the description in the invoice like that of D.J., extra light liquor licence, bar handling, liquor room charges etc. are clear indication of their use for recreation purposes and as per Board Circular dated 19/01/2010, services avail for recreation purpose shall not be treated as admissible CENVAT credit.

9. During the course of hearing of the appeal, learned Counsel for the Appellant submitted that Appellant was never asked to produce any other evidence in order to establish that those services were not for personal use and were primarily used for business purposes, for which on services of Accommodation, General Insurance & Auxiliary services, Photography services and Air Travel Agent matter can be remanded back for production of satisfactory evidence to establish that those services were availed for business purposes. As can be seen from the order passed by the learned Commissioner (Appeals), arguments were led in that direction like Air Travel services and Hotel Accommodation services were taken for attending meetings/conferences/seminars with various clients of the company and for annual meetings etc. but as could be seen from the last para of point 6.4(b) of the order passed by the learned Commissioner (Appeals), he had distinctly observed that relevant documentary trail, and not invoices alone, can establish the purpose of use of the services if for personal or business. This being the facts on record, it would be just and proper to remand the matter to the Commissioner (Appeals) for such examination of additional proof concerning availment of input services by the Appellant except for Renting of

Immovable property which is held in favour of the Appellant. Hence the order.

ORDER

10. The appeals are allowed in part and the order passed by the learned Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh vide Order-in-Appeal No. MKK/474-477/RGD-APP/2018-19 dated 13.02.2019 is hereby set aside. The Appellant is entitled to get refund on CENVAT credit of Rs.77,53,479/- +1,27,340/**- =** Rs.78,80,819/- on Renting of Immovable property with applicable interest and for ascertainment of its eligibility for availment of CENVAT credit concerning Restaurant services, Accommodation services, General Insurance & Auxiliary services, Photography service and Air Travel Agent services matter is remanded back to the Commissioner (Appeals) for further examination of documents and Appellant is duty bound to produce the documentary proof before him upon notice. The entire exercise is expected to be completed within 6 months from the date of receipt of this order.

(Order pronounced in the open court on 25.03.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad