CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 88347 of 2019

(Arising out of Order-in-Appeal No. NA/CGST/A-I/MUM/61/2019-20 dated 30.07.2019 passed by the Commissioner of CGST & CX (Appeals-I), Mumbai.)

M/s Ribbit Studios ....Appellant
Kakad Mansion, 601, Saraswati Colony,
Santacruz (West), Mumbai – 400 054

VERSUS

Assistant Commissioner of CGST & CX, ...Respondent
Division-VI, Mumbai South
13th Floor, Air India Building,
Nariman Point, Mumbai 400 021

APPERANCE:

Ms. Puloma Dalal. C.A. for the Appellant
Shri Vinod Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85237/2023

Date of Hearing: 16.12.2022
Date of Decision: 22.02.2023

Order of the Commissioner of CGST & CX (Appeals-I), Mumbai confirming the order passed by the Adjudicating Authority denying CENVAT Credit of Rs.9,32,024/- and asking for its recovery with interest and equal penalty is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant was a provider of sound recording service etc. and it took Service Tax registration in 2011. During the course of audit of the accounts maintained by the Appellant for the period between 2012-13 and 2016-17, it was noticed that certain invoices were addressed to Wilfred Apartment, Bandra (West) and Zeba Centre, Lower Parel which were not its registered office as shown in the ST-2 returns. Accordingly proposal to deny CENVAT Credit of the amount mentioned above, paid against invoices not addressed to the Appellant registered premises, was made through a show-cause notice issued to the Appellant. Upon its reply matter had undergone adjudication and first appellate process that resulted in confirmation of demand alongwith interest and equal penalty as proposed in the show-cause notice. Legality of the said confirmation order of the Commissioner (Appeals) is assailed in this appeal.

3. During the course of hearing of this appeal learned Counsel for the Appellant Mrs. Puloma Dalal submitted that Appellant firm was established by a foreigner who is basically an Artist and Performer engaged in artistic activities like singing, composing music, recording sound and performing plays and they registered their studio in the address of one of its partners. Being individual performers invoices were mostly raised in the name of Appellant firm without any address and in some invoices addresses of the studios where they performed the events were mentioned instead of the address mentioned in the register certificate. She further submitted that

there was no finding in the Order-in-Original or Order-in-Appeal that the credits taken were not admissible credits and the only ground of refusal of availment of such credits to the Appellant was attributed to the variance of the address in the invoices *vis.-a-vis.* registration certificate. In placing reliance on the case laws reported in *2017 (7) G.S.T.L 269 (All.) in the case of Commissioner of Central Excise Vs. Curadev Pharma (P) Ltd., 2021 (44) G.S.T.L 169 (Tri. – Mumbai) in the case of Tata Business Support Services Ltd. Vs. Commissioner of Service Tax – VII, Mumbai, 2019 (27) G.S.T.L 694 (Tri. – Mumbai) in the case of AMB Knowledge Ltd. Vs. Commissioner of Customs (Appeals), Mumbai-III, 2021 (45) G.S.T.L. 184 (Tri.-Del.) in case of Rajender Kumar & Associates Vs. Commissioner of Service Tax, Delhi-II, 2012 (27) S.T.R. 134 (Kar.) in case of mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Banglore,* she submitted that the issue has been settled way back in 2012 itself (in *mPortal India Wireless Solutions P. Ltd*.) that registration of service receiver premises cannot be a precondition for availment of CENVAT Credit, for which order passed by the Commissioner (Appeals) is unsustainable in law and facts. She also had drawn attention of this Bench to the order of the Commissioner (Appeals) observing that no proof was provided concerning rendering of output services from the premises in question and Appellant had not furnished any evidence in that respect. She argued that those observations were erroneous for the reason that all individual invoices were submitted to the Commissioner (Appeals), as could be evidenced from the endorsement received from his office on the covering letter dated

10.07.2019 through which invoices were submitted and they were numbered from page 1 to 92 of Annexure-I. In referring to agreement copies annexed to the Appeal memo at page 82 and at page 103, she pointed out that the Appellant had hired studios temporarily for the purpose of performance and service providers have raised the invoices showing those studios in the invoices as Appellant's address. In producing copy of invoice dated 30.03.2016 issued by one Monika Sharma Dogra, one of such disputed invoices in which credit has been denied, she matched the address mentioned in the said invoice as Wilfred Apartment, Bandra (West) as the same address of the lessor of lease & license agreement dated 21.09.2013 executed with Appellant company's partner Michael McCleary. She re-affirmed her stand that output services were infect provided from the hired premises against which credits were taken for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. Per contra, learned Authorised Representative for the Respondent-Department Mr. Vinod Kumar argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and drawn attention of this Bench to the fact that certain lease agreements had expired within 2 years of its execution in 2012 and registration certificate was issued in the name of the Appellant's partner and not to the Appellant firm for which the order passed by the Commissioner (Appeals) needs no interference by the Tribunal.

5. I have gone through the case record and observe that such a submission made by the Authorised Representative is erroneous as disputed credits also pertains to the period of the subsistence of the agreement and the invoices with address of the said premises were not issued after 2017. The other apprehension of the Authorised Representative is refuted by way of production of registration certificate copy issued to the Appellant on 22.10.2011, which is accepted by this Bench as additional piece of evidence. Therefore, the dispute remains confined to the sole point as to if invoices not raised as per the address mentioned in the registration certificate of the Appellant are eligible for the purpose of availment of CENVAT Credits. On this point it is, worthwhile, to refer the observation made by the Commissioner (Appeals) in his order at para 4 (iv) & (v)

> *"(iv) I find that the burden of proof is on the assessee to prove that they are entitled for Cenvat Credit. They have to prove that output services were indeed rendered from the premises in question to enable them to avail the credit. Registration serves one such purpose. For good five years they made no efforts to include the premises in question in the ST-2. Notwithstanding decisions in the cases of mPortal India etc. relied upon by the appellants have not furnished any evidence that indeed output service was rendered from the impugned premises. The premises having no linkage with the provision of output service the claim of Cenvat credit fails. The adjudicating authority cannot be faulted for confirming the demand.*

> *(v) Indeed there are a number of decisions wherein it has been held that registration of premises is not a pre-requisite for availing Cenvat credit. But in almost all such cases it is also noted that registrations were obtained subsequently. The instant case wherein for five successive years premises were not sought to be registered places this case on a different footing meriting differential treatment. Accordingly, the ratio of case law cited is not applicable. The argument of ignorance put forth is not convincing."*

6. Having regard to the points raised in the sub-para (iv) it can be said that judicial precedent relied upon by the Appellant, as discussed above, including the one referred by the Commissioner (Appeals) in the case of *mPortal India Wireless Solutions P. Ltd.* are in favour of the Appellant. Since it has been distinctly analysed in all those judgements that there was no such requirement of having premises registered so as to make credits eligible for the purpose of its availment against inputs taken for providing output services. In respect to the non-adherence of the judicial precedent set on the issue, as found in the relied upon decisions noted above, the ground cited by the Commissioner (Appeals) is that in all such cases the premises were sought to be registered subsequently. This is also untrue for the reason that in the leading case of *mPortal India Wireless Solutions P. Ltd.* itself, referred by the Commissioner (Appeals), it was held that registration with the department is not a pre-requisite for claiming the credit as no provision is in existence in the CENVAT Credit Rules, 2004 to impose such restriction. Moreover, going by the judgments relied upon, it is not noticeable

that only because premises were subsequently registered credit for the previous period was allowed since in some of the cases credits were also allowed in respect of other unregistered premises. As could be found from the CENVAT Credit Rules, 2004 except for filing application for refund etc. which is to be made to the jurisdictional Commissioner under whom the business of the Appellant is carried out no such provision exist for rejection of credit availed by any assessee on the ground that the service provider has not issued the invoices in its address registered with Service Tax Authority. Hence the order.

ORDER

6. The appeal is allowed and the order passed by the Commissioner of CGST & CX (Appeals-I), Mumbai vide Order-in-Appeal No. NA/CGST/A-I/MUM/61/2019-20 dated 30.07.2019 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 22.02.2023)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad