CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

SERVICE TAX APPEAL NO. 85017 OF 2017

(Arising out of Order-in-Appeal No. MUM/SVTAX-002-APP-459-2016-17 dated 30.09.2016 passed by the Commissioner (Appeals)-II, Service Tax, Mumbai.)

BNP PARIBAS INDIA SOLUTION P LTD
Infinity Building No. 4, ...Appellant
601 Off Filmcity Road,
Malad (E), Mumbai-400 097.

VERSUS

COMMR SERVICE TAX- VI, MUMBAI ....Respondent
1st Floor, Mahavir Jain Vidyalaya,
CD Barfiwala Marg, Andheri (W),
Mumbai-400 058.

APPERANCE:

Appearance:

Shri Kevin Gogri, Advocate with Shri Rishi Gala for the Appellant
Ms. S. Varalakshmi Addl. Commr.for the Respondent

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 87536/2024

Date of Hearing : **16/12/2024**
Date of Decision: **16/12/2024**

PER: Bench

We have heard from both sides.

2. Learned counsel for the Appellant submits that they sought for refund against their export of output services namely Information Technology from September 2008 to March 2009, through three refund applications and all three were rejected on the ground that certain premises against which cenvat credit was claimed, were not registered premises, certain refund claims were made after limitation period was over and also there was overlapping periods for which simultaneous refund applications were filed but, Learned Commissioner (Appeals) had given his finding only on non-registration of premises, that

dis-entitled the Appellant to get the refund and recorded in his finding at para-12 that he is not required to deal with other two grounds basing on which rejection order was passed by the Refund Sanctioning Authority. He further submits that mPortal judgment passed by Hon'ble Karnataka High Court as reported in India Wireless Solutions P Ltd, (2012 (27)S.T.R. 134 (Kar), is very clear that all premises from which output services were provided are not required to be registered and period of computation of limitation should be taken from the date on which FIRC (Foreign Inward Remittance Certificate) has been issued, in view of the decision prevailing then in respect of SPAN INFOTECH (INDIA) PVT LTD P LTD, CESTAT Bangalore Bench [2018(12)G.S.T.L.200(Tri-LB) in which larger Bench of this Tribunal had given clear findings, for which the order of the Commissioner(Appeals) is not sustainable in both law and facts.

3. Learned Authorised Representative objects the appeal on the grounds raised by learned Counsel for the Appellant in stating that Ld. Commissioner (Appeals) had taken into consideration the ratio of the judgment passed in m portal but had placed his reliance on the judgment of Hon'ble Madras High Court passed in the case of Sutham Nylocots 2014 (305) ELT 255(Mad) (P-56) in which there was a finding that unregistered assesse cannot claim refund unless registration is complete. She also supports the reasoning and rationality of the order passed by the Commissioner (Appeals) in respect of ineligibility of credit availed on unregistered premises and seeks no interference in the order passed by the Commissioner (Appeals).

4. Taking note of the submission and after perusal of the Appeal Paper Book, we consider it appropriate to reproduce para 12 of the order passed by the learned Commissioner (Appeals) on 30.09.2016, which would bring more clarity to the submission and provide the basis for which this appeal is filed. It reads- (Para-12 p-57)

> *Hence, the credits in respect of other unregistered premises taken by the Appellant is not proper and not tenable, hence the contention of the appellant is not acceptable and held to be inadmissible. Since the refund claim merits rejection on this ground itself, the other aspect of the grounds of rejection of their refund claims is not discussed.*

5. We are unable to accept the contention of the learned Commissioner (Appeals) for the reason that he has already dealt with m portal decision but distinguish the same with reference to Sutham Nylocot decision of the Hon'ble Madras High Court, in which issue was regarding non-registration of the assessee where as in the present appeal the issue relates to admissibility /non-admissibility of cenvat credit taken as input received by the appellant on its unregistered premises. Furthermore, after the decision of SPAN INFOTECH (INDIA) PVT LTD P LTD, Statute has also been necessarily amended to incorporate provision to the effect that computation of limitation period to grant refund would start from the date of receipt of foreign exchange by the exporter, apart from the fact that section 35A(4) of the Central Excise Act 1944 which is equally applicable to Service Tax matters in view of operation of section 73(5) of the Finance Act 1994, the Commissioner (Appeals) is required to pass his/her order disposing of the appeal in writing by stating the points for determination, the decision thereon and the reasons for such decision, which is admittedly not done in respect of all issues raised before him while disposing of the appeal .

6. We are, therefore, of the considered view that matter requires a *de novo* hearing by the Commissioner (Appeals) for which this appeal is required to be remanded back to him for *de novo* hearing and for giving his finding in accordance with section 35A (4) of the Excise Act, equally applicable to Service

Tax matters, while disposing of the appeal. The discussions which are made above in respect of position of law developed through judicial decisions are to be taken into consideration by the Commissioner (Appeals). Matter being quite year old, instituted about seven years back the same shall be expeditiously disposed of preferably within four months from the date of receipt of this order with due notice to the parties.

7. The appeal is allowed by way of remand on the above terms and the order passed by the Commissioner (Appeals) vide his order No. MUM/SVTAX-002-APP-459-2016-17 dated 30.09.2016 is hereby set aside.

(Order pronounced and dictated in open court)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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