

AFR

Court No. - 35

Case :- CENTRAL EXCISE APPEAL No. - 326 of 2016

Appellant :- Commissioner, Service Tax

Respondent :- M/S Pangea 3 Legal Database Systems Pvt. Ltd.

Counsel for Appellant :- Krishna Agarawal

Counsel for Respondent :- Sandeep Harkauli

Hon'ble Bharati Sapru,J.

Hon'ble Saumitra Dayal Singh,J.

This is a central excise appeal against the order of the Customs, Excise & Service Tax Appellate Tribunal dated 04.11.2015. The department by way of this appeal raised two following questions of law:-

i. Whether the Hon'ble CESTAT was correct in allowing the refund and CENVAT credit of the services used at unregistered premises?

ii. Whether the Hon'ble CESTAT was correct in allowing the refund and CENVAT credit of the services, namely, carpet dry cleaning, home plant service, interior decoration services, renting on car parking, company secretary services, supply of meal vouchers, travel insurance services and on the strength of invoices (involving CENVAT credit of Rs. 16,579/-). Addressed to Guest House and other residential premises?

It is the case of the department that the respondent is a 100% export oriented unit providing out put service such as business auxiliary service falling under Section 65 (105) (zzb) of the Finance Act, 1994 and that the said service is also covered under Rule 3 (iii) of the Export of Service Rules, 2005.

While admittedly the respondent service provider had registered under the Finance Act, 1994 in respect of the aforesaid service, it is the case of the department that the said registration was

originally confined at NOIDA and that the addition of the premises at Mumbai was done on 04.09.2012 and therefore, the benefit of CENVAT on service provided from the Mumbai premises could not be availed by the opposite party prior to the date of inclusion of the Mumbai premises in the registration whereafter the assessee has availed centralized registration for the two premises.

While the Adjudicating Authority and the First Appellate Authority had partly disallowed the claim of CENVAT, while the Tribunal has reversed the findings of those authorities in the impugned order, wherein in paragraph 6 it has held as under:

"6. Having considered the rival contentions I find that in view of the Registration granted- centralised, including the premises at Mumbai, it is conclusive proof that the appellant is in legal occupation of the said premises, have rendered output services from such premises and have maintained centralised accounting at the Noida Office. I also find that on opening of branch at Mumbai by appellant, an intimation by the director of STPI was given to revenue. I also find that output service have been rendered by Mumbai Office, for which bill (s) have been raised. Thus I hold that the appellant is entitled to Cenvat credit in respect of input services received at the premises other than the premises at Noida."

We have heard Sri Krishna Agarwal, learned counsel for the department and Sri Krishnamohan K. Menon, Sri Mohit Singh and Sri Sudeep Harkauli, learned counsel for the respondent.

We find that the similar issue had arisen before the Karnataka High Court in the matter of mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore 2012 (27) STR 134 (Karnataka), wherein vide paragraph 7 of the said judgment has held as under:-

"7. Insofar as 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 that registration is mandatory and that if such a 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 in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."

This very question came up for consideration in a matter before this Court in the case of **Commissioner, Service Tax Commissionerate Vs. M/s Atrenta India Pvt. Noida reported in [2017(2) ADJ 590 (DB)]**, wherein this Court took a view that the refund could not be denied to the assessee merely on the basis of non-registration of the premises. Following the reasoning already given by this Court in the aforesaid judgment, we are of the view that the question no.1 raised in the memo of appeal has to be answered against the revenue and in favour of the assessee.

Insofar as the second question raised in the instant appeal, it has been candidly stated by Sri Krishna Agarwal that the quantum of Cenvat credit involved in the second question is about Rs. 16,578/- only. In respect of the same the tribunal has considered the material on record and has recorded its findings restricting the claim to such of the service on which opposite party was held to be entitled to the Cenvat credit and thus has not granted the benefit of Cenvat Rs. 820/- in respect of items on which the eligibility was not established. This in our opinion it is a pure finding of fact recorded by the Tribunal calling for no interference by this Court in the facts

of this case.

Accordingly the appeal is dismissed and both the questions are answered in favour of the assessee and against the revenue.

Order Date :- 28.2.2017

Lbm/-