(2021) 08 CESTAT CK 0060

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos. 40913, 40914 Of 2014

Commissioner Of Central Excise And Service Tax — APPELLANT

Vs

M/s.C-Dot Alcatel Lucent Research Centre (P) Ltd. — RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 5

Citation : (2021) 08 CESTAT CK 0060

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : Arul C. Durairaj, Sharanya Vijay K

Final Decision : Dismissed

Judgement

1. Brief facts are that the respondents had filed refund claim under Rule 5 of Cenvat Credit Rules, 2004. After due process of law, the refund sanctioning authority rejected part of the refund in respect of Customs House Agents Service, Rent-a-Cab Service, Telephone Service, Courier Service, C&F Agents Service, Renting of Immovable Property Service and Air Travel Agents Services. Against such order, the appellants preferred appeal before the Commissioner (Appeals), who held that the respondents are eligible for refund. Against this order, the department filed appeal raising two grounds. Firstly, that the premises of the appellant was not registered during that period under the Service Tax Department and also that the respondents have not been able to establish the nexus between the input services and the output services exported by them. The Tribunal vide Final Order Nos.40184-40185/2015, dated 04.03.2015 dismissed the appeals of the department. Against that order, the department moved the High Court and vide judgment dated 24.02.2021, these appeals have been remanded to the Tribunal to reconsider the issue raised in the appeal filed by the department.

2. Today, when the matter came up for hearing, the learned Authorised Representative Shri Arul C. Durairaj appeared and argued for the department. He

submitted that the period involved is from 2008-09. The respondents have not registered the premises under the department and for this reason, they are not eligible for credit/refund. The learned Authorised Representative, however, fairly conceded that this issue has been settled by the decision of the Hon'ble High Court in the case of M/s. mPortal India Wireless Solutions Pvt. Ltd., Vs Commissioner of Service Tax, Bangalore reported in 2012 (27) S.T.R.134 (Kar.,). With regard to the second issue that the respondents have not established the nexus between the input services and output services, the learned Authorised Representative argued that the respondents have to prove that these input services were used for providing the output services. Therefore, the Commissioner (Appeals) ought not to have allowed the refund.

3. The learned counsel Ms. Sharanya Vijay K. appeared and argued for the respondents. The issue as to whether refund of the Cenvat credit is eligible even though if the premises is not registered has been decided in the case of M/s. mPortal India Wireless Solutions Pvt. Ltd.,(supra). With regard to the second issue, she submitted that the period involved is prior to April, 2011. During the relevant time, the definition of "input services" included "activities relating to business". That the respondents are engaged in providing output services, which are exported. All these input services were used for their business of export of services. The Commissioner (Appeals) has rightly granted the refund.

4. Heard both sides.

5. As stated above, the first issue as to whether refund can be denied on the ground that the premises is unregistered has been settled by the decision in the case of M/s. mPortal India Wireless Solutions Pvt. Ltd., (supra).

"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."

5.1 The second allegation is that the respondents have not established the nexus between the input service and the output services. As correctly argued by the learned counsel for the respondents, the definition of "input services" during the relevant period included "activities relating to business".

5.2 The department does not have a case that these input services were not used for export. I find that the Commissioner (Appeals) has correctly granted the refund. The impugned order does not require any interference. Both the appeals are dismissed.

(Dictated and pronounced in open court)