
(2011) 09 KAR CK 0033
In the Karnataka High Court
Case No : CEA No. 6 of 2011

mPortal India Wireless Solutions (P.) Ltd. APPELLANT
Vs
Commissioner of Service Tax RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

CENVAT Credit Rules, 2002 — Rule 5
Finance Act, 1994 — Section 11 B

Citation : (2012) 27 STR 134 : (2012) 34 STT 322 : (2013) 63 VST 168

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : B.G. Chidanand Urs, for the Appellant; B. Pramod, for the Respondent

Final Decision : Dismissed

Judgement

1. The assessee has preferred this appeal challenging the order passed by the authorities including that of the Tribunal where his claim for refund has been rejected.

2. The assessee M/s. mPortal (India) Wireless Solutions Pvt. Ltd. Bangalore, is an STPI Unit engaged in development and export of Software. It is a 100% export oriented unit. It had claimed refund of accumulated Cenvat credit of Rs. 4,36,985. The period of dispute is the financial year 2006-07. The Assistant Commissioner, Service Tax, Division HI, Bangalore, rejected the refund claim filed by the assessee on the ground that copy of the assessee registration certificate on the service tax is not submitted. He has also not submitted the details as called for in the show cause notice. They have claimed Cenvat credit on inputs but have not submitted the details/nature of services utilized. Some of the input services appear to be telephone services, security, consultancy, software development, manpower recruitment/placement services.

3. The assessee is engaged in the export of software which is not a taxable service during the claim period as per the Finance Act, 1994. For the aforesaid

reasons the refund of Cenvat credit was not allowed. Further, it was held the claim up to September, 2006 is time barred. Aggrieved by the said order, the assessee preferred an appeal by the Commissioner of Central Excise, who upheld the said order. The assessee preferred an appeal to the Tribunal. The Tribunal held that the assessee was entitled to take credit of service tax paid on input service even though the export of software is not a taxable service. It also held that the limitation u/s 11B does not apply for refund of accumulated Cenvat credit. However, it declined to grant any relief on the ground that the Cenvat scheme is available only to an assessee registered with the department. Unless the assessee is registered with the department he cannot earn credit of service tax paid input service in the accounts. A person not registered with the department cannot claim refund under Rule 5 of the Cenvat Credit Rules. Therefore, they rejected the appeal. Aggrieved by the said order the present appeal is filed.

4. Therefore, short question that arise for consideration is, whether the authorities were justified in refusing to grant Cenvat credit to which the assessee was legally entitled to on the ground that he is not registered with the department.

5. We have heard the learned counsel for the parties.

6. The assessee is a 100 per cent export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985 is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the cenvat credit. The assessee is entitled to the refund of the Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation u/s 11B does not apply for refund of accumulated cenvat credit. Therefore, bar of limitation cannot be a ground to refuse cenvat credit to the assessee.

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 prescribed 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.

8. That does not mean that the assessee is entitled to refund as claimed by him consequent to setting aside these orders. As is clear from the order of the original authority in the show cause notice, they have categorically called upon the assessee to furnish the particulars of the taxes paid on input services. They

called upon the assessee to produce the invoices, bills, receipts to substantiate their claim for their verification. The assessee would be entitled to the refund of the Cenvat credit only on his proof that he has paid input service tax.

In that view of the matter, the matter is now remanded back to the adjudicating authority to decide the correctness of the claim made by the petitioner. Liberty is reserved to the assessee to produce such documents which are in his possession to substantiate his claim. On production of such documents, the assessing authority shall process the application for refund in accordance with law and expeditiously.